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BOOK 1:
Pages
77411-77700

BOOK 2:
Pages
77701-78116

Federal Register

Book 1 of 2 Books
Monday, November 24, 1980

Highlights

Calendar of Federal Regulations—The U.S. Regulatory Council publishes catalog of regulations under development by 33 departments and agencies (Part II of this issue)

- 77520 Family Median Income** HHS/HDSO publishes notice determining extent of Federal financial participation in state expenditures under Title XX for the period 10-1-81 through 9-30-82
- 77421 Natural Gas** DOE/FERC establishes final rule regarding an incentive maximum lawful price for certain intrastate gas produced from wells on which production enhancement work has been performed; effective 12-15-80
- 77455 Highways** DOT/FHWA revises proposed regulation requiring the use of domestic steel construction materials on most federally-assisted highway projects; comments by 1-23-81
- 77466 Highway Safety** DOT/FHWA proposes to revise rules prohibiting the use of drugs and other substances by interstate truck and bus drivers; comments by 3-24-81
- 77459 Nondiscrimination** EPA gives notice of intent to publish proposed consolidated regulations on or about 12-6-80

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77519 Health HHS/ADAMHA announces it is accepting applications from clinical investigators to assist in analysis of behavioral data from ongoing NIMH Collaborative Program on Psychobiology of Depression-Biological Studies; apply by 1-23-81

77438 Mineral Materials Interior/BLM publishes emergency final regulation removing dollar limitations on negotiated sales of mineral materials that will be used on Trans-Alaska Pipeline System and Alaska Natural Gas Transportation System; effective 11-24-80

77434 Environmental Protection EPA designates fish cannery waste site in Pacific Ocean as approved interim ocean dumping site; effective 11-24-80

77466 Hazardous Waste EPA re-opens comment period to 1-23-81 on hazardous waste listings

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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 336

Employee Responsibilities and Conduct

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations governing employee responsibilities and conduct, Part 336 of the FDIC Rules and Regulations. The essence of the changes is to allow FDIC bank examiners to maintain credit cards with banks affiliated with banks supervised by the FDIC. The amendments are deemed necessary in order to provide for the legitimate credit needs of examiners, without affecting the objectivity of their work.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Joseph A. DiNuzzo, Attorney, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, D.C. 20429, telephone (202) 389-4384.

SUPPLEMENTARY INFORMATION: The FDIC regulates or supervises all insured State-chartered banks that are not members of the Federal Reserve System ("insured State nonmember banks"). To accomplish its regulatory function, the FDIC sends bank examiners and assistant examiners ("examiners") to examine banks subject to its regulatory jurisdiction. The examiner reviews records maintained by the bank and interviews bank officers and employees concerning its operations. The examiner is instructed to assess the bank's financial condition, to determine whether it is engaged in unsafe or unsound banking practices, and to determine whether it is in compliance

with applicable laws and regulations. The findings of the examiner are written up in a report of examination. The FDIC takes supervisory actions—such as the issuance of a cease-and-desist order or the termination of deposit insurance—on the basis of the examiner's findings.

Section 212 of title 18, United States Code, prohibits any officer, director, or employee of a bank the deposits of which are insured by the Federal Deposit Insurance Corporation from making a loan to any examiner "who examines or has authority to examine" such bank. Section 213 of title 18, United States Code, in turn, prohibits an examiner from accepting a loan from "any bank, corporation, association or organization examined by him or from any person connected therewith." Executive Order 11222 prohibits Federal employees from having direct or indirect financial interests that conflict substantially, or appear to conflict substantially, with their official duties and responsibilities. To implement the two Federal criminal statutes, and to guard against conflicts of interest or the appearance of conflicts of interest, the FDIC currently prohibits examiners from becoming obligated on any extension of credit (including credit extended through the use of a credit card) by: 1) an insured State nonmember bank (a bank examined by the FDIC) or 2) a national bank (a bank examined by the Office of the Comptroller of the Currency) or a State bank which is a member of the Federal Reserve System (a bank examined by the Federal Reserve Board) that is an affiliate of an insured State nonmember bank. If a merger, acquisition, or other transaction results in an extension of credit to an examiner from an insured State nonmember bank or its affiliate, the obligation has to be removed unless the FDIC Ethics Counselor determines that removal would be an undue hardship on the employee. When retention is permitted, the obligation must be paid according to its existing terms, without any renegotiation, and the employee is disqualified from examining and participating in decisions having an economic impact on the lender or an affiliate of the lender.

On September 5, 1980, the FDIC published in the *Federal Register* (45 FR 58876) notice of a proposal to amend its policies relating to examiner loans.

These amendments relax current policy in four major ways:

1. They permit examiners to obtain credit through the use of a credit card from national banks and State banks which are members of the Federal Reserve System ("member banks") affiliated with an insured State nonmember bank, provided the total extension of credit at no time exceeds \$5,000 and is on terms no more favorable than those available to other bank customers. This is a marked departure from the current blanket prohibition against taking out a credit card from an affiliate of an insured State nonmember bank.

2. They provide that when a member bank becomes affiliated with an insured State nonmember bank after an extension of credit is made, the examiner is not precluded from continuing to liquidate the extension of credit pursuant to its terms, without any renegotiation. In the case of credit extended through the use of a credit card where the total extension of credit exceeds \$5,000 at the time of affiliation, however, the credit card may not be used again until the existing indebtedness on the card is, under the terms agreed to when the card was issued, reduced to below \$5,000. The examiner with an extension of credit over \$5,000 extended through the use of a credit card or the examiner with any extension of credit not extended through the use of a credit card is disqualified from examining the insured State nonmember bank affiliated with the lender or from participating in any decision having an impact on it. As it stands now, an examiner has to divest himself/herself of all extensions of credit which, after their making, become extensions of credit from affiliates of insured State nonmember banks *unless* the Ethics Counselor decides this would cause undue hardship.

3. They provide that when a member bank converts to or merges into a State nonmember bank, any extension of credit made by such bank to an examiner prior to the conversion or merger may be retained and liquidated in accordance with the original terms of the extension of credit. In the case of credit extended through the use of a credit card, however, the credit card must be returned to the issuer. The existing indebtedness on the card, though, may be liquidated under the

terms agreed to when the card was issued. The examiner is disqualified from examining the resultant insured State nonmember bank or from participating in any decision having an impact on it. This revision departs from present policy since it allows, in all cases, retention of an extension of credit from a member bank which becomes an insured State nonmember bank.

4. Finally, the revision permits a newly appointed examiner to retain any outstanding extension of credit from an insured State nonmember bank and liquidate it in accordance with its original terms. In the case of credit extended through the use of a credit card, however, the credit card must be returned to the issuer. The existing indebtedness on the card, though, may be liquidated under terms agreed to when the card was issued. Further, a newly appointed examiner is allowed to retain any outstanding extension of credit from a member bank affiliated with an insured State nonmember bank if it is liquidated in accordance with its original terms. In the case of credit extended through the use of a credit card where the total extension of credit exceeds \$5,000, however, the credit card may not be used again until the existing indebtedness on the card is, under the terms agreed to when the card was issued, reduced to below \$5,000. When the newly appointed examiner remains obligated on an extension of credit (other than credit extended through the use of a credit card, the total extension of which is \$5,000 or less and is on terms no more favorable than those available to other bank customers), the examiner is disqualified from examining or participating in any decision having an impact on the lender or its affiliate.

The proposed amendments were reviewed and approved by the Department of Justice ("DOJ"). All changes in FDIC regulations concerning loans to examiners must be reviewed and approved by the DOJ in order to insure that the changes do not violate sections 212 and 213 of title 18 of the United States Code (18 U.S.C. 212 and 213), statutes which DOJ is responsible for enforcing. Also, in accordance with regulations issued by the United States Office of Personnel Management, the final amendments were approved by the United States Office of Government Ethics.

The FDIC received twenty-five comments regarding the proposed amendments. The majority (twenty) of individuals who commented expressed an enthusiastic and complete support for the amendments. Their general sentiment was that FDIC examiners

have long been at an undue disadvantage in obtaining necessary credit and that the ability to obtain credit cards from affiliated banks will help correct this problem.

Eight writers noted that the FDIC should go even further in relaxing its credit restrictions upon examiners. In light of these comments, the FDIC considered a greater relaxation of its restrictions. It was determined, however, that at present the Corporation will proceed with only the credit-card liberalization; concurrently, the FDIC will assess whether a further relaxation is necessary, administratively feasible and legally permissible.

Three individuals suggested that allowing examiners to obtain credit cards from affiliate banks will cast doubt upon the integrity and objectivity of bank examiners. The FDIC disagrees with this opinion. Corporation employees do not examine banks from which they will now be permitted to obtain credit cards. As such, there is only a remote and tangential connection between the supervisory responsibilities of FDIC examiners and the extensions of credit permitted by these amendments. Hence, the FDIC maintains that the amendments will not interfere with the objectivity and integrity of its examiners.

As the result of a special request for such comments, a number of individuals commented on the treatment of demand loans *vis-a-vis* the amendments to Part 336. The main issue here deals with the elimination of outstanding demand loans held by examiners. Because the FDIC's current regulations do not allow examiners to maintain any loans with affiliated banks, the elimination of outstanding demand loans comes into play only if: (1) a member bank becomes affiliated with an insured State nonmember bank, (2) a member bank converts into or merges with a State nonmember bank, or (3) a newly hired examiner has an outstanding demand loan with an affiliated bank. Regarding demand loans which are structured with a repayment schedule, the amendments provide for these three situations by permitting the examiner to liquidate the outstanding indebtedness pursuant to the terms of the existing agreement. With respect to outstanding demand loans without repayment schedules, however, the amendments do not address the question of how examiners should liquidate these loans. Considering the infrequency with which the situation is expected to arise, the FDIC has decided to handle demand loans without repayment schedules on a case-by-case basis. The majority of

comments on this matter suggested that examiners be given a one- or two-year period in which to liquidate demand loans without repayment schedules. These comments will be viewed by the Ethics Counselor upon the *ad hoc* review of such loans.

The FDIC is presently evaluating further revisions of Part 336. Some of the comments received by the FDIC regarding the foregoing amendments dealt with matters being studied under this review. One such matter is the treatment of loans made to an examiner's spouse. Another is the adoption of a joint policy by the Federal Financial Institutions Examination Council regarding loans to examiners. These comments will be considered in the near future.

Since the amendments to Part 336 are internal in nature (they affect only FDIC examiners), the changes do not affect the recordkeeping or reporting requirements or the competitive status of insured State nonmember banks; therefore, neither a cost-benefit analysis nor a small bank impact statement has been prepared.

In consideration of the foregoing, 12 CFR Part 336 is amended as follows:

1. The authority citation for Part 336 reads as follows:

Authority: E.O. 11222; 3 CFR, 1964-65 Comp.; 5 CFR 735.104, unless otherwise noted.

2. In § 336.735-11, paragraph (b)(5)(i) is revised to read as follows:

§ 336.735-11 Gifts, entertainment, favors and loans.

* * * * *

(b) * * *

(5) * * *

(i) A Corporation examiner or assistant examiner may not, after his or her appointment, directly or indirectly accept or become obligated on any extension of credit, including credit extended through the use of a credit card, from an insured State nonmember bank. Further, a Corporation examiner or assistant examiner may not, after his or her appointment, directly or indirectly accept or become obligated on any extension of credit from a member bank affiliated with an insured State nonmember bank unless the credit is extended through the use of a credit card, does not exceed \$5,000 at any time, and is on terms no more favorable than those available to other bank customers. An examiner who has received an extension of credit through the use of a credit card permitted by this subsection shall not be disqualified from participating in any examination of or any decision having an impact on an

insured State nonmember bank affiliated with the bank which issued the card.

3. In § 336.735-13, paragraph (a)(7) and (a)(8) are revised to read as follows:

§ 336.735-13 Financial interests and obligations.

(a) ***

(7) If a merger, acquisition, or other transaction results in a credit extension to an examiner or assistant examiner prohibited by § 336.735-11(b)(5)(i), that extension of credit may be retained if it is liquidated under its original terms, without any renegotiation. In the case of credit extended through the use of a credit card issued by an insured State nonmember bank, however, the credit card must be returned to the insured State nonmember bank. The existing balance of indebtedness on the card, however, may be liquidated under the terms agreed to when the card was issued. In the case of credit extended through the use of a credit card issued by a member bank affiliated with an insured State nonmember bank where the total extension of credit exceeds \$5,000, the credit card may not be used again until the existing indebtedness on the card is, under the terms agreed to when the card was issued, reduced to below \$5,000. If a merger, acquisition, or other transaction results in a credit extension to an examiner or assistant examiner prohibited by § 336.735-11(b)(5)(i) and that extension of credit is retained in accordance with this subsection, the examiner or assistant examiner is disqualified from examining or participating in any decision having an impact on the insured State nonmember bank lender or its affiliate. If a merger, acquisition, or other transaction results in the existence of a credit extension prohibited by § 336.735-11(b)(5) (ii) or (iii) the obligation will be removed unless the Ethics Counselor determines that removal would be an undue hardship on the employee. When an obligation prohibited by § 336.735-11(b)(5) (ii) or (iii) may be retained, the obligation will be paid according to its existing terms, without any renegotiation, and the employee will be disqualified under § 336.735-13(a) from participating in any examination of or any decision having an economic impact on the lender or any affiliate of the lender.

(8) An examiner or assistant examiner who is newly appointed may remain obligated on any outstanding extension of credit from an insured State nonmember bank if the obligation is

liquidated under its original terms, without any renegotiation. In the case of credit extended through the use of a credit card, however, the credit card must be returned to the insured State nonmember bank. The existing balance of indebtedness on the card, however, may be liquidated under the terms agreed to when the card was issued. Further, an examiner or assistant examiner who is newly appointed may remain obligated on any extension of credit from a member bank affiliated with an insured State nonmember bank if the obligation is liquidated under its original terms, without any renegotiation. In the case of credit extended through the use of a credit card where the total extension of credit exceeds \$5,000, however, the credit card may not be used again until the existing indebtedness on the card is, under the terms agreed to when the card was issued, reduced to below \$5,000. An extension of credit would be "outstanding" if it was made before the date on which the new appointee officially commenced employment by reporting for duty. When the newly appointed examiner or assistant examiner remains obligated on an extension of credit (other than an extension of credit extended by a member bank through the use of a credit card, the total extension of which does not exceed \$5,000 and is on terms no more favorable than those available to other customers), he or she is disqualified under § 336.735-13 from participating in any examination of or any decision having an impact on the lender or an affiliate of the lender. An examiner or assistant examiner may not, after his or her appointment, directly or indirectly become obligated on any extension of credit (including credit through the use of a credit card) from an insured State nonmember bank. An examiner or assistant examiner may not, after his or her appointment, become obligated on an extension of credit from an affiliate of an insured State nonmember bank unless the extension of credit is extended through the use of a credit card, does not exceed \$5,000 at any time, and is on terms no more favorable than those available to other bank customers. Full disclosure of any obligation to a bank and the date the obligation should be fully repaid must be made in writing to the Regional Director on an official Corporation form designated for the purpose. The Regional Director shall also be notified of the repayment of the obligation. For bank credit cards, these disclosure requirements are met if the Regional Director is notified in writing of the date

of receipt of the card, the name of the bank acting as principal and the date of the discontinuance if the card is destroyed or returned to the bank. Regional Directors will immediately forward copies of the disclosures by examiners or assistant examiners to the Ethics Counselor. All disclosure statements received by Regional Directors shall be treated as confidential. The information on the disclosure statements submitted to a Regional Director shall also be reported on annual disclosure statements submitted to the Ethics Counselor. The Ethics Counselor shall treat all disclosure statements as confidential.

By order of the Board of Directors dated November 17, 1980.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 80-36562 Filed 11-21-80; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 80-EA-51, Amdt. 39-3977]

AVCO Lycoming O-320-H, O-360-E Engines; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends AD 80-04-03 applicable to O-320-H type aircraft engines, and concerns spalling and chipping of hydraulic tappets. It required a replacement of exhaust valve spring seats and hydraulic lifters and an oil inspection for contaminants. This rule adds additional engine models to the applicability statement and imposes a requirement to add an oil additive with a reporting of results to the FAA. The oil additive will alleviate the spalling problem. Failure to correct the spalling will affect the airworthiness of the engine.

EFFECTIVE DATE: November 24, 1980. Compliance is required as set forth in the AD.

ADDRESSES: Avco Lycoming Service Bulletins may be acquired from the manufacturer at Williamsport, Pennsylvania 17701.

FOR FURTHER INFORMATION CONTACT: I. Mankuta, Propulsion Section, AEA-214, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Tel. 212-995-2894.

SUPPLEMENTARY INFORMATION: Since the publication of AD 80-04-03 which relates to this problem, it has been determined that there have been additional cases of spalling and chipping. The manufacturer has tested and demonstrated that the oil additive will reduce or eliminate spalling. It was also determined that the O-360E Series engines have the same valve train design and are also susceptible to the spalling condition. Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations, 14 CFR 39.13 is amended, by amending and revising AD 80-04-03 to read as follows:

AVCO Lycoming: Applies to O-320-H series engines and O-360-E, LO-360-E, TO-360-E and LTO-360-E series engines; (all serial numbers and hydraulic lifter (tappet) configurations).

Compliance required as indicated, unless already accomplished.

a. To prevent hazards in flight associated with bent push rods on Model O-320-H series engines, accomplish the following:

Within the next 50 hours in service after the effective date of this AD, replace the upper exhaust valve spring seats with P/N LW-16475-KL1 and the exhaust hydraulic lifters with P/N LW-16586 in accordance with AVCO Lycoming Service Bulletin No. 435 dated March 17, 1979, or FAA-approved equivalent, on all O-320-H series engines with serial numbers up to and including L-6182-76 and on all O-320-H series engines overhauled (remanufactured by Lycoming) before March 19, 1979.

b. To prevent excessive wear and oil system contamination associated with hydraulic lifters spalling on O-320-H, and O-360-E, LO-360-E, TO-360-E and LTO-360-E series engines, accomplish the following:

1. At the next engine oil change but no later than 50 hours in service after the effective date of this AD, and at each subsequent oil change or 50-hour interval, whichever occurs earlier, add one 6-ounce can of Lycoming P/N LW-16702 oil additive in accordance with Lycoming Service Bulletin No. 446B.

2. Within the next 50 hours in service after the effective date of this AD and at every subsequent oil change thereafter, not to exceed 100-hour intervals, inspect lubrication system for metal contaminants. Inspection of the lubrication system consists of visual examination for minute particles of metal suspended in the oil, examination of the engine oil suction screen for presence of metal particles and the inspection of the external full flow oil filter for metal particles by cutting it open so that the pleated element can be unfolded and examined. If ferrous

metal contaminants are detected during the above inspections, the camshaft lobes and all hydraulic lifters must be inspected for wear or loss of metal. Replace the camshaft and hydraulic lifters found to have such indications.

3. If contaminants are detected, engine maintenance entries shall be made and notification in writing must be sent to the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region, specifying the following information:

Total time and time since overhaul.

Total time on hydraulic lifters.

Total time since oil additive first used.

(Reporting Approved by the Bureau of the Budget under OMB No. 04-R0174).

c. Equivalent methods of compliance may be approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

d. Upon submission of substantiating data by an owner or operator through an FAA Maintenance Inspection, the Chief, Engineering and Manufacturing Branch, FAA, may adjust the compliance time specified in this AD.

e. Special Flight Permits may be issued per FAR's 21.197 and 21.199 to authorize operation of aircraft to a base where the modification and inspection required by this AD may be performed.

AD 80-04-03 was effective February 8, 1980.

This amendment is effective November 24, 1980.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, 1423, 1431(b)); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c) and 14 CFR 11.89)

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044 as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Jamaica, New York, on November 10, 1980.

Lonnie D. Parrish,

Acting Director, Eastern Region.

[FR Doc. 80-36513 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Airworthiness Docket No. 80-ASW-29, Amdt. 39-3976]

Bell Model 47 Series Helicopters; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a revision to Amendment 39-3942, (45 FR 67645) Airworthiness Directive (AD) 80-21-09, applicable to Bell Model 47 series helicopters equipped with the 47-641-170 series tail rotor hub and blades by

correcting bolt part numbers specified in the AD. This amendment is needed to correct bolt part numbers that were transposed.

DATES: Effective November 24, 1980. Compliance required as specified in the amendment.

ADDRESSES: A copy of the bulletins and instructions may be obtained from the Regional Counsel, Attention: Docket No. 80-ASW-29, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. Bell service information may be obtained from the Product Support Department, Bell Helicopter Textron, P.O. Box 482, Fort Worth, Texas 76101.

FOR FURTHER INFORMATION CONTACT:

J. H. Major, Airframe Section, Engineering and Manufacturing Branch, ASW-212, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas, telephone number (817) 624-4911, extension 516

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-3942 (45 FR 67645), AD 80-21-09, which currently requires within 100 hours' time in service after November 17, 1980, installation of safety washers and longer bolts on both tail rotor pitch control links on Bell Model 47 series helicopters equipped with the 47-641-170 series tail rotor hub and blades by specifying the correct bolt part numbers in subparagraph (c) of the AD.

After issuing Amendment 39-3942, AD 80-21-09, the agency determined the bolt part numbers stated in subparagraph (c) of the AD were incorrect for the pitch horns specified and were in conflict with and transposed from that specified in Bell Helicopter Textron Alert Service Bulletin No. 47-80-5, Rev. A. Therefore, the AD is being amended by specifying the correct bolt part numbers.

Since this amendment corrects a transposed part number to agree with a manufacturer's bulletin and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and good cause exists for making the amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending Amendment 39-3942 (45 FR 67645), AD 80-21-09, by revising subparagraph (c) of the amendment to read as follows:

(c) Install bolts P/N NAS1304-32D or 20-057-4-32D (used with pitch horn, P/N 47-641-187-1, -3, or -5), or P/N NAS1304-30D, or 20-

057-4-30D (used with pitch horn, P/N 47-641-187-7) as appropriate, with washer, P/N 47-641-189-1 or -3 under the bolt head or nut, and washer P/N 47-641-189-3 between the link bearing and pitch horn with bevel towards the bearing. Torque nuts 80 to 100 inch-pounds and install cotter pins.

This amendment becomes effective November 24, 1980.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Issued in Fort Worth, Tex., on November 7, 1980.

C. R. Melugin, Jr.,
Director, Southwest Region.

[FR Doc. 80-36514 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 80-WE-55-AD, Amdt. 39-3979]

Hughes Helicopters Model 369 Series Helicopters; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which imposes a restriction in operations in that the middle front seat must not be occupied during flight in falling and/or blowing snow. The AD is prompted by a report that possibly the occupant of the middle front seat disarmed the Automatic Engine Reignition System and blocked the crew's view of the auto-reignition system "ARMED" and "RE-IGN" advisory lights. This could result in a commitment for an autorotation landing since adequate time might not be available for a manual engine restart.

DATES: Effective December 4, 1980. Compliance schedule—As prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from: Hughes Helicopters, Division of Summa Corporation, Centinela and Teale Streets, Culver City, California 90230.

Also, a copy of the service information may be reviewed at, or a copy obtained from:

Rules Docket in Room 916, FAA, 800 Independence Avenue, SW., Washington, D.C. 20591, or Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, California 90261.

FOR FURTHER INFORMATION CONTACT:

Robert T. Razzeto, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

SUPPLEMENTARY INFORMATION: There has been a report of a crash during snow precipitation in which a possible cause is being attributed to the occupant of the middle front seat inadvertently disarming the Automatic Engine Reignition System and also blocking the crew's view of the advisory lights. A pilot and an aerospace engineer from the Flight Test Section have made an evaluation of the location of the switches and lights associated with the Automatic Engine Reignition System and have determined that the existing arrangement is a non-compliance with CAR 6.611 and 6.353. Since this condition is likely to exist or develop on other helicopters of the same type design, this Airworthiness Directive is being issued to require a restriction in operations, specifically, the middle front seat is not to be occupied during flight in falling and/or blowing snow.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

Hughes Helicopters: Applies to Model 369 Series Helicopters, certified in all categories, equipped with Automatic Engine Reignition System.

Compliance is required as indicated unless already accomplished.

To prevent the possibility of the middle front seat occupant accidentally deactivating the Automatic Engine Reignition System and also from blocking the crew's view of the automatic reignition "ARMED" and "RE-IGN" advisory lights, accomplish the following:

(a) Within thirty (30) consecutive calendar days or prior to flight in falling and/or blowing snow, whichever comes first, after the effective date of this AD, install a placard in close proximity to the Automatic Engine Reignition Arming switch and in plain view of the pilot which states "Middle front seat is not to be occupied during flight in falling and/or blowing snow" or equivalent words.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate aircraft to a base for the

accomplishment of modification required by this AD.

(c) Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved by the Chief, Engineering and Manufacturing Branch, FAA Western Region.

This amendment becomes effective December 4, 1980.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this document involves a final regulation which is not considered to be significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

Issued in Los Angeles, Calif., on November 12, 1980.

John D. Mattson,
Director, FAA Western Region.

[FR Doc. 80-36511 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 80-SO-69, Amdt. No. 39-3978]

Piper PA-28, PA-32, and PA-34 Series Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires inspection of the ammeter connections on certain Piper Model PA-28, PA-32, and PA-34 series airplanes and replacement of the ammeter with an airworthy like part as necessary. This AD is prompted by several reports of heat damaged ammeters and smoke in the cockpit caused by loose and shorting ammeter terminal posts. A shorted condition at the ammeter could result in complete electrical failure.

DATES: Effective November 28, 1980. Compliance required within the next 25 hours time in service after the effective date of this AD.

ADDRESSES: The applicable service bulletin may be obtained from Piper Aircraft Corporation, Lockhaven, Pennsylvania 17745, telephone (707) 748-6771.

A copy of the service bulletin is also contained in the Rules Docket, Room 275, Engineering and Manufacturing Branch, FAA, Southern Region, 3400 Norman Berry Drive, East Point, Georgia.

FOR FURTHER INFORMATION CONTACT: Fred Jones, ASO-213, Engineering and Manufacturing Branch, FAA, Southern

Region, P.O. Box 20636, Atlanta, Georgia 30320, telephone (404) 763-7781.

SUPPLEMENTARY INFORMATION: There have been reports of heat damaged ammeters and loosening and shorting of the ammeter terminal posts in certain Piper Aircraft Corporation Models PA-28, PA-32, and PA-34 airplanes which resulted in smoke in the cockpit and unscheduled/emergency landings. Since this condition is likely to exist or develop on other airplanes of the same type design, an Airworthiness Directive is being issued which requires inspection of the ammeter connections on certain Piper Aircraft Corporation Models PA-28, PA-32, and PA-34 series airplanes and replacement of the ammeters as necessary.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

Piper Aircraft Corporation: Applies to the following Piper models certificated in all categories:

Model	Serial numbers
PA-28-180	7405001 thru 7505259
PA-28-181	7690001 thru 8190081
PA-28-201T	7921001 thru 7921091
PA-28-235	7411001 thru 7710089
PA-28-236	7911001 thru 8111021
PA-28R-200	7435001 thru 7635545
PA-28R-201	7737001 thru 7837317
PA-28R-201	7703001 thru 7803373
PA-28R-201T	7918001 thru 8118017
PA-28RT-201T	7931001 thru 8131022
PA-32-260	7400001 thru 7800008
PA-32-300	7440001 thru 7940290
PA-32-301	8006001 thru 8106005
PA-32-301T	8024001 thru 8124001
PA-32R-300	7680001 thru 7880068
PA-32RT-300	7885001 thru 7985105
PA-32RT-300T	7787001 and 7887002 thru 7987126
PA-32R-301	8013001 thru 8113002
PA-32R-301T	8029001 thru 8129002
PA-34-200T	7570001 thru 8170028

Compliance is required as indicated, unless already accomplished. To prevent smoke in the cockpit and possibly complete electrical failure resulting from shorting of ammeter terminal posts, accomplish the following:

(a) Within the next 25 hours time in service after the effective date of this AD, inspect the ammeter and ammeter connections of the above listed airplanes as follows:

Inspect to determine if washer beneath each terminal post retainer nut is nylon or phenolic. If nylon, no further action is required. If any terminal post washer is

phenolic, replace the washer with a Stewart Warner nylon washer, Part No. 820005 (Piper Part No. 758-549). Nylon washer must be positioned with shoulder adjacent to the cluster case. Before installing replacement nylon washer, inspect for evidence of overheating and/or arcing at or near the ammeter terminal posts. If there are any indications of overheating and/or arcing, replace the ammeter with an airworthy like part.

Note.—When installing a new ammeter, insure that the terminal post washers are nylon, that the terminal post retainer nuts are properly tightened, and that the terminal posts are secure. Use caution installing hardware as terminal posts are brass and easily damaged.

(b) Make appropriate maintenance record entry after completing the inspection and installation/reconnection.

Note.—Piper Service Bulletin No. 698 covers this subject.

(c) An equivalent method of compliance may be approved by the Chief, Engineering and Manufacturing Branch, FAA, Southern Region.

This amendment becomes effective November 28, 1980.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "For Further Information Contact."

Issued in East Point, Ga, on November 12, 1980.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 80-36512 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 80-WE-50-AD, Amdt. 39-3975]

Robinson Model R-22 Helicopter; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection of tailcone supporting framework tubes for cracks on Robinson Model R-22 helicopters. The AD is prompted by two reports of cracks in the tailcone supporting framework tubes which could result in loss of the tailcone.

DATES: Effective November 24, 1980. Compliance schedule—As prescribed in the body of the AD.

ADDRESSES: The applicable service information may be obtained from:

Robinson Helicopter Company, 24747 Crenshaw Boulevard, Torrance, California 90505; telephone (213) 539-0508.

Also, a copy of the service information may be reviewed at, or a copy obtained from:

Rules Docket in Room 916, FAA, 800 Independence Avenue, SW., Washington, D.C. 20591,

or
Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, California 90261.

FOR FURTHER INFORMATION CONTACT: Robert T. Razzeto, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

SUPPLEMENTARY INFORMATION: There have been reports of cracks in the tailcone supporting tubes on two Robinson Model R-22 helicopters which could result in loss of the tailcone. Since this condition is likely to exist or develop on other helicopters of the same type design, an Airworthiness Directive is being issued which requires inspection of the P/N A020-2 frame assembly on certain Robinson Model R-22 helicopters.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

Robinson Helicopter: Applies to Model R-22 helicopters serial numbers 0002 through 0082 certificated in all categories.

Compliance required as indicated, unless already accomplished.

To prevent possible loss of the tailcone resulting from supporting framework tube or tube weldment fractures, accomplish the following:

(a) Unless accomplished within the previous 90 hours' time in service, in accordance with the methods of Robinson Helicopter Company Service Bulletin B-4

dated September 19, 1980, hereinafter referred to as SB B-4, prior to the accumulation of 100 hours' time in service or within 10 hours time in service from the effective date of this AD and thereafter at intervals not to exceed 100 hours' time in service since the last such inspection, dye penetrant inspect the tubes and weldments for cracks per methods of, and in the areas identified as items 1 through 4 of the figure of SB B-4.

(b) If no cracks are found the rotorcraft may be returned to service provided that, on reassembly, the hardware as discussed in paragraphs 7 and 8 of the section of SB B-4 entitled "Removal of the A 023 Tailcone Assembly" is replaced with the following identical new parts:

NAS-679-A4 NUT (5 each)
NAS 1304-22 Bolt (4 each)
NAS 1304-3 Bolt (1 each)
PAL NUTS (5 each)

(c) If cracks are detected as a result of the inspections of paragraph (a) of this AD, prior to further flight notify the Chief, Aircraft Engineering Division, FAA Western Region for instructions and disposition of the part. Exact location and extent of crack must be made available to the FAA.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections required by this AD.

(e) Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

This amendment becomes effective November 24, 1980.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this document involves a final regulation which is not considered to be significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures 944 FR 11034; February 26, 1979.

Issued in Los Angeles, Calif., on November 5, 1980.

John D. Mattson,
Director, FAA Western Region.

[FR Doc. 80-36515 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-ASO-38]

Alteration of Federal Airways, Orlando, Fla.; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: On September 22, 1980, the FAA published amendments to Part 71, effective October 30, 1980, to alter the descriptions of Victor Airways V-3, V-

152, V-159, V-267, and V-441 in the vicinity of Orlando, Fla. (45 FR 62795). On October 9, 1980, the FAA published corrections to that amendment (FR Document 80-31499; 45 FR 67072) to correct the descriptions of V-3, V-51, and V-152 and to extend the effective date of the amendments to December 25, 1980. This action corrects discrepancies subsequently found in the descriptions of V-3, V-152, and V-159.

EFFECTIVE DATE: December 25, 1980.

FOR FURTHER INFORMATION CONTACT: C. Horne, Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION: This action corrects the amendment, published on September 22, 1980 (45 FR 62795) to V-159, by correcting minor variations in radials of V-159 caused by computation calculation methods.

This action also corrects the amendment as corrected (45 FR 62795 and 67072) by further correcting the descriptions of V-3 and V-152. This is necessary to correct minor variations found in the radials of V-152 caused by computation calculation methods. This is also necessary to properly describe the V-3 west alternate which was inadvertently described as being from Vero Beach, Fla., to Ormond Beach, Fla., instead of from Melbourne, Fla., to Ormond Beach, Fla.

Since this action is corrective in nature to achieve the intended results described in the preambles to the final rule and correction, I find that further notice and public procedure is unnecessary.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71), as republished, amended, and corrected (45 FR 307, 62795, and 67072), is further amended, effective 0901 G.m.t., December 25, 1980, as follows:

1. FR Document 80-31499 (45 FR 67072, October 9, 1980) is amended as follows:

a. Under V-3, after the words "Vero Beach 143°" is amended to read "radials; Vero Beach 343° INT Melbourne, Fla., 161° radials Melbourne; Melbourne 341° radials INT Ormond Beach, Fla., 161° radials Ormond Beach; including a W alternate from Melbourne to Ormond Beach, via Melbourne 321° INT Ormond Beach 211° radials;"

b. Under V-152, all after "St. Petersburg, Fla." is deleted and "via INT

St. Petersburg 062° and Ormond Beach, Fla., 211° radials; Ormond Beach, including a S alternate via Lakeland, Fla., Orlando, Fla.; INT Orlando 049° and Ormond Beach 161° radials;" is substituted therefor.

2. FR Document 80-29167 (45 FR 62795, September 22, 1980) is corrected as follows:

Under V-159, after "Ocala, Fla.," add "including a S alternate from INT Vero Beach 319° and Melbourne, Fla., 298° radials, to Ocala via INT Melbourne 298° and Ocala 145° radials."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on November 18, 1980.

B. Keith Potts,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-36509 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-ASW-43]

Designation of Compulsory Reporting Point

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates TRIAD Intersection as a compulsory reporting point. TRIAD is located on V-477, 28 miles south of Scurry, Tex., VORTAC. Designation of TRIAD as a compulsory reporting point improves air safety and enhances the flow of traffic between Scurry and Houston.

EFFECTIVE DATE: February 19, 1981.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION: On October 27, 1980, the FAA proposed to

amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate TRIAD, Tex., Intersection as a compulsory reporting point (45 FR 70878). TRIAD Intersection, located 28 miles south of Scurry, Tex., on V-477 is currently depicted on charts as a noncompulsory reporting point. This action increases air traffic safety by requiring aircraft to report passing TRIAD. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.203 of Part 71 was republished in the *Federal Register* on January 2, 1980 (45 FR 645).

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) designates TRIAD, Tex., Intersection, located 28 miles south of Scurry, Tex., on V-477 as a compulsory reporting point. This amendment enhances air safety by requiring aircraft to report passing TRIAD Intersection.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 645) is amended, effective 0901 G.m.t., February 19, 1981, as follows:

Under § 71.203 "TRIAD, Tex." is added.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.69)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on November 18, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-36517 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-AWA-11]

Amendment to Victor Airways, Patuxent River, Md.; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects a rule that excluded several airways from adjacent restricted areas in the vicinity of Patuxent River, Md., as published in the FR Doc. 80-33612 appearing at page 71773 in the *Federal Register* of October 30, 1980. The correction is required because the exclusions for Federal Airways V-20, V-33, and V-157 were incorrectly stated as to the applicable restricted areas.

EFFECTIVE DATE: November 24, 1980.

FOR FURTHER INFORMATION CONTACT: George O. Hussey, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, FR Doc. No. 80-33612 appearing at page 71773 in the *Federal Register* of Thursday, October 30, 1980, is corrected as follows:

a. On page 71773, under Adoption of the Amendment, the third line is changed to read "§ 71.123 of Part 71 of the Federal"

b. On page 71773, the amendatory language to § 71.123 is changed to read as follows:

3. Under V-20 the following is added: "The airspace within R-4007A and R-4007B is excluded."

4. Under V-33 the following is added: "The airspace within R-4007A and R-4007B is excluded."

5. Under V-157 the following is added: "The airspace within R-4005 and R-4006 is excluded."

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this

action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on November 18, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-36516 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-ASW-36]

Designation of Transition Area: Holdenville, Oklahoma

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of the action being taken is to designate a transition area at Holdenville, Oklahoma. The intended effect of the action is to provide controlled airspace for aircraft executing a new instrument approach procedure to the Holdenville Municipal Airport. The circumstance which created the need for the action is the proposed establishment of a nondirectional radio beacon (NDB) on the airport.

EFFECTIVE DATE: February 19, 1981.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone 817-624-4911, extension 302.

History

On August 21, 1980, a notice of a proposed rule making was published in the *Federal Register* (45 FR 55759) stating that the Federal Aviation Administration proposed to designate the Holdenville, Okla., transition area. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes this amendment is that proposed in the notice.

The Rule

This amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) designates the Holdenville, Okla., transition area. This action provides controlled airspace from 700 feet above the ground for the protection of aircraft executing a new proposed instrument approach

procedure to the Holdenville Municipal Airport.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 445) is amended, effective 0901 G.m.t., February 19, 1981, as follows:

In Subpart G, § 71.181 (45 FR 445), the following transition area is added:

Holdenville, Oklahoma

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Holdenville Municipal Airport, (latitude 35°05'15"N., longitude 96°25'00"W.), and within 3 miles each side of the 348° bearing of the Holdenville NDB, (latitude 35°05'07"N., longitude 96°23'47"W.), extending from the 5-mile radius area to 8.5 miles north of the Holdenville NDB.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Fort Worth, Tex., on November 5, 1980.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 80-36520 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 8908]

Encyclopaedia Britannica, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order modifies Paragraphs II (A), (B), (D) and (E) of the original Commission order issued March 9, 1976 (41 FR 19301, 87 F.T.C. 421) against respondents. The modifications permit respondents, for a one-year period, to use alternative means of making prescribed disclosures regarding their sales solicitation activities. This action affords respondents further opportunity to propose provisions that

will lessen any undue financial impact on them and to demonstrate to the Commission that these provisions will effectively communicate to prospective customers, the disclosures required by the previous order.

DATES: Decision issued March 9, 1976. Modifying order issued Oct. 28, 1980.

FOR FURTHER INFORMATION CONTACT: FTC/P, Robert Blacher, Washington, D.C. 20580 (202) 523-3868.

SUPPLEMENTARY INFORMATION: In the Matter of Encyclopaedia Britannica, Inc., a corporation, and Britannica Home Library Services, Inc., a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13 and appearing at 41 FR 19301, remain unchanged.

The Order Modifying Cease and Desist Order is as follows:

On March 9, 1976, the Commission issued an Order in this docket against Encyclopaedia Britannica, Inc., a corporation and Britannica Home Library Services, Inc., a corporation. The Order includes, *inter alia*, provisions Paragraphs II(A) and II(B)) requiring respondent, Encyclopaedia Britannica, Inc., to disclose in certain advertising and in a specified manner that persons who reply as requested may be contacted by a salesperson for the purpose of selling respondent's products. Furthermore, the Order (Paragraphs II(D) and II(E)) requires that when a sales representative of the respondent visits the home or place of business of potential purchasers of respondent's products, such representatives shall, at the time admission is sought, present a 3 by 5 card which identifies the sales representative and discloses that the purpose of the visit is to sell respondent's products.

On August 2, 1979, the United States Court of Appeals for the Seventh Circuit affirmed and enforced the Commission Order in this docket. On March 17, 1980, the Supreme Court of the United States denied respondents' petition for *certiorari*. Accordingly, pursuant to Section 5(g)(3) of the Federal Trade Commission Act, as amended, the Order of the Commission in this docket is now final.

During the time their *certiorari* petition was pending in the Supreme Court, respondents initiated discussion with the staff of the Commission concerning possible modifications of Paragraphs II(A), II(B), II(D) and II(E) of the Commission's Order. On March 18, 1980, Paragraphs II(A), (B), (D), and (E) of the Commission's Order were stayed until further notice in order to permit the Commission to consider proposed

modifications. On March 26, 1980, respondents filed their "Request to Reopen Proceedings and Modify Order." Respondents filed a memorandum in support of this request on May 2, 1980. In their petition and supporting memorandum, respondents asserted that, without such modifications, they would be placed at a competitive disadvantage, resulting in substantial financial harm to their business operations. Respondents also asserted that they have adopted in the last several years new sales procedures, including disclosures in advertising and in business calling cards presented by salespersons at the door of prospective customers, which effectively disclose to prospective customers the direct sales solicitation purpose and nature of such sales activities.

Pursuant to § 2.51 of its Rules of Practice, the Commission invited public comment on respondents' petition to modify the Order. Having considered respondents petition and supporting memorandum, and the comments received, the Commission has determined that it would be appropriate to provide respondents further opportunity to (1) propose provisions that would lessen any undue financial impact on them and (2) present evidence demonstrating that such provisions will effectively communicate the information required by the original Order. Furthermore, with respect to the advertising disclosures required by Paragraphs II(A) and II(B), the Commission has determined that, without necessity of further evidence, certain modifications of the advertising disclosures can be ordered which will communicate effectively while allowing respondents alternative methods of making the disclosures.

Therefore, it is ordered, That Paragraphs II (A), (B), (D) and (E) of the Order issued in this docket on March 9, 1976 shall be modified as follows:

1. Paragraph II(A) shall read:

"A. Disseminating or causing to be disseminated any advertisement or promotional material which solicits participation in any contest, drawing or sweepstakes, or solicits any response to any offer of merchandise, service or information, unless any such solicitation clearly and conspicuously discloses that a person who replies as requested may be contacted directly by a salesperson for the purpose of selling respondent's products, using one of the following disclosures:

1. Important: this card will let you know of my interest and enable your [location designation, if appropriate] sales representative to
(contact me at home) (information)
(call or visit me) with (details)
(contact me in person) (facts) on how I

- may (purchase)/(buy) [applicable product].
2. Important: Returning this card allows me to have your [location designation, if appropriate] sales representative (contact me at home) (information) (call or visit me) with (details) (contact me in person) (facts) on how I may (purchase)/(buy) [applicable product].
3. Important: Returning this card will enable your [location designation, if appropriate] sales representative to (contact me at home) (information) (call or visit me) with (details) (contact me in person) (facts) on how I may (purchase)/(buy) [applicable product].

Upon prior approval in writing of the Assistant Director of the Division of Compliance of the Bureau of Consumer Protection, or his designee, respondent may use any other disclosure that clearly and conspicuously discloses that a person who replies as requested may be contacted directly by a salesperson for the purpose of selling respondent's products. A request for approval shall be in writing and shall be deemed granted if not disapproved within 30 days after receipt by the Assistant Director of the Division of Compliance of the Bureau of Consumer Protection."

2. Paragraph II(B) shall read:

"B. Providing any return card, coupon or other device which is used to respond to any advertisement of promotional material covered by Paragraph II(A) above, unless one of the disclosures set forth in such Paragraph, or a disclosure approved by the Assistant Director of the Division of Compliance or his designee as satisfying the requirements of Paragraph II(A), clearly and conspicuously appears in immediate proximity to the space provided for a signature or other identification of the responding party. During the one (1) year period from the date this Order becomes final, respondent may submit a request to reopen these proceedings pursuant to § 2.51 of the Commission's Rules of Practice. Such petition shall contain information demonstrating that any proposed modifications of Paragraphs II(A) and II(B) will clearly and conspicuously disclose to potential purchasers of respondent's products that a person who replies as requested may be contacted directly by a salesperson for the purpose of selling respondent's products. The foregoing sentence shall not be construed as a limitation on respondent's submission of additional information regarding the request to reopen, including information relating to the financial impact of Paragraphs II(A) and II(B) on respondent. Should a request be submitted, the Commission shall determine whether to reopen these proceedings within one hundred-twenty (120) days of receipt of such request. The procedure to reopen the proceedings as set forth herein is in addition to, and not in lieu of, any other procedure (or time period with respect to such procedure) permitted by law or the Commission's Rules of Practice."

3. Paragraph II(D) shall be amended by adding the following proviso at the end thereof:

Provided, however, that for one (1) year from the date this Order becomes final, respondent may, in lieu of the card required by this Paragraph of the Order, substitute a business card of at least 2 inches by 3 1/2 inches containing only the following information:

- (1) The name of the corporation.
- (2) The name of the salesperson.
- (3) The term "sales representative."
- (4) An address and telephone number at which the corporation or salesperson may be contacted.
- (5) The product or the corporation logo or identifying mark.

During this one (1) year period, respondent shall comply in all other respects with the requirements of Paragraph II(D) above. Prior to the expiration of the aforesaid time period, respondent may submit a request to reopen these proceedings pursuant to § 2.51 of the Commission's Rules of Practice. Such petition shall contain information demonstrating that the business card required in Paragraph II(D), as modified above, is effective in communicating to potential purchasers, prior to the entry into their homes or places of business by any of the respondent's sales representatives, that the purpose of the sales representative's call is to solicit the sale of respondent's products. The foregoing sentence shall not be construed as a limitation on respondent's submission of additional information regarding the request to reopen, including information on the financial impact of Paragraph II(D) on respondent. Should a request be submitted, the Commission shall determine whether to reopen these proceedings within one hundred-twenty (120) days of receipt of such request. Respondent may continue to use the business card, as described by this *proviso*, during the time that a request to reopen these proceedings pursuant to this Paragraph is pending, and, if such proceedings are reopened, until the Commission determination of the matter has become final. The procedure to reopen the proceedings as set forth herein is in addition to, and not in lieu of, any other procedure (or time period with respect to such procedure) permitted by law or the Commission's Rules of Practice.

4. Paragraph II(E) shall be amended by striking the words "to direct each such person to read the information contained on such card." The amended Paragraph shall read:

E. Failing to give the card, required by Paragraph II(D) above, to each person and to provide each such person with an adequate opportunity to read the card before engaging any such person in any sales solicitation.

It is further ordered, That the foregoing modifications shall become effective upon service of this order.

It is further ordered, That the stay issued on March 18, 1980 shall be vacated and Paragraphs II (A), (B), (D) and (E), as modified by this order, shall have full force and effect upon service of this order.

By direction of the Commission.
Commissioner Pitofsky did not participate.

Carol M. Thomas,
Secretary.

[FR Doc. 80-36530 Filed 11-21-80; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 4

[Docket No. RM80-65]

Exemption From All or Part of Part I of the Federal Power Act of Small Hyrdoelectric Power Projects With an Installed Capacity of Five Megawatts or Less; Correction

November 18, 1980.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction.

SUMMARY: On November 7, 1980, the Federal Energy Regulatory Commission (Commission) issued Order No. 106 (45 FR 76115, November 18, 1980) which implements exemption procedures under Subpart K (§§ 4.101 to 4.108) of Part 4 of its regulations. This document makes corrections to that rule.

FOR FURTHER INFORMATION CONTACT:

James Hoecker, Division of Regulatory Development, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, D.C. 20426, (202) 357-9342.

SUPPLEMENTARY INFORMATION: The Final Rule in that order is corrected as follows:

1. In § 4.103(a), the reference to "paragraph (d)" is corrected to read "paragraph (c)."
2. In § 4.104(a)(1), the subparagraph title is corrected to read "*Unexpired permit or license*." The word "application" is deleted.
3. In § 4.104(a)(2)(ii)(A), the word "preliminary" is inserted before the word "permit".
4. In § 4.104(b), the paragraph title is corrected to read: "*Priority of exemption applicant's earlier permit or license application*."
5. In § 4.104(e), the title of subparagraph (1) is corrected to read: "*Exemption against permit*."; and, the title of subparagraph (2) is corrected to read: "*Exemption against license*."
6. In the first sentence of § 4.106(c) and the third sentence of § 4.106(e), the

word "submitted" is inserted before the word "by".

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-36616 Filed 11-21-80; 8:45 am]
BILLING CODE 6450-85-M

18 CFR Parts 271, 273, and 274

[Docket No. RM80-50; Order No. 107]

High-Cost Natural Gas: Production Enhancement Procedures

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is establishing an incentive maximum lawful price under section 107 of the Natural Gas Policy Act of 1978 (NGPA) for certain intrastate gas produced from wells on which production enhancement work has been performed. The rule establishes an incentive price for production enhancement gas equal to the lesser of the section 109 price or a price negotiated by the parties after November 9, 1978 in connection with the production enhancement work. This price is available for natural gas for which a maximum lawful price prescribed under section 105 of the NGPA is applicable. The rule defines "production enhancement work" to include ten different types of production enhancement techniques and establishes the procedures for determining whether natural gas qualifies for the incentive price.

EFFECTIVE DATE: December 15, 1980.

FOR FURTHER INFORMATION CONTACT:

Webster Gray, Office of Pipeline and Producer Rates, 825 North Capitol Street NE., Room 6000-B, Washington, D.C. 20426, (202) 357-8693

Roger Coven, Office of General Counsel, 825 North Capitol Street NE., Room 4013, Washington, D.C. 20426, (202) 357-9124

Issued November 13, 1980.

On July 25, 1980, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (45 FR 51219, August 1, 1980) to establish an incentive maximum lawful price under section 107 of the Natural Gas Policy Act of 1978 (NGPA) for certain intrastate gas produced from wells on which production enhancement work has been performed. The proposed incentive price was the lesser of the section 109 maximum lawful price or the negotiated contract price. The Commission proposed this incentive

price in order to prevent loss of production from wells for which the existing intrastate contract prices permitted under section 105 of the NGPA are insufficient to encourage production enhancement work necessary to maximize or continue production.

We are now promulgating a final rule. During the course of this rulemaking we have reaffirmed our original, general purpose to encourage production of gas reserves that would not otherwise be produced. However, the Commission's lack of sufficient information respecting the economic impact of the proposed rule on the natural gas industry and consumers and our inability to elicit enough information during the comment period to permit us to predict the exact nature and extent of that impact dictate that we proceed with caution.¹ Therefore, we have not extended the scope of the rule to include gas subject to sections 104 and 106(a),² i.e., gas committed or dedicated to interstate commerce; or gas subject to section 106(b), i.e., intrastate rollover contract gas. Nor have we increased the incentive price ceiling above the section 109 maximum lawful price, i.e., the price applicable to gas not subject to any other section of Title I. We have also decided to retain those requirements in the rule that are essential to insure that the incentive price provided in this rule is available only when necessary to provide a reasonable incentive for production.³ However, based on comments received during this

¹ Commission action in this regard commenced on June 13, 1979 with the issuance of a "Notice of Inquiry Regarding the Implementation of Section 107 (b) and (c) of the Natural Gas Policy Act of 1978" to identify categories of high-cost natural gas and correlative incentive prices. Docket No. RM79-44 (44 FR 34511, June 18, 1979). In response to a petition by the Sun Gas Company (Docket No. RM80-41, filed February 27, 1980), the Commission initiated Docket No. RM80-50 and in that docket, approved in principle on May 29, 1980, proposed a rule classifying natural gas resulting from production enhancement procedures as high-cost natural gas and specifying an incentive price. See Notice of Availability of the Staff Draft, Docket No. RM80-50 June 12, 1980 (45 FR 41449, June 19, 1980); and Memorandum to Public File: Informal Conferences with the Public to Discuss the Staff Draft, Docket No. RM80-50. A Notice of Proposed Rulemaking was issued in RM80-50 on July 25, 1980, and thirty day comment period was announced. Two public hearings were held following the comment period to receive oral comment.

² There are additional reasons for excluding section 104 and section 106(a) gas from the scope of this rule. See Discussion *infra*.

³ Under section 107 the Commission is empowered to designate certain natural gas as "high cost natural gas" if it is produced under conditions that present extraordinary risks or costs and to establish prices higher than the otherwise applicable maximum lawful price to the extent necessary to provide reasonable incentives for the production of such gas.

rulemaking, we have extended the scope of this rule to add five production enhancement techniques to the five originally proposed.

I. Background

A. The Problem

Section 105 of the NGPA establishes maximum lawful prices for first sales of natural gas that was not committed or dedicated to interstate commerce on November 8, 1978, and that is sold under a contract that was in effect on November 8, 1978. Section 105 also covers sales of gas under successor contracts to such existing contracts. Maximum lawful prices in section 105 are referenced to the price or price terms of the contract on November 9, 1978.

Under section 105(b)(2), a producer whose contract price on date of enactment was above the maximum lawful price for "new" natural gas, i.e., the section 102 price, is entitled to receive the higher of the section 102 price or his contract price, adjusted for inflation. If and when the section 102 price exceeds the contract price (adjusted for inflation), as a result of the effect of the additional section 102 growth factor,⁴ the producer and purchaser can renegotiate the contract price up to the section 102 price.

Under section 105(b)(1), however, the producer whose contract price on November 9, 1978, was less than the section 102 price is only entitled to the lower of the section 102 price or the price under the terms of the contract as of November 9. Therefore, not only is the producer making sales subject to section 105(b)(1) denied the section 102 price, he is also prohibited from renegotiating the contract to obtain a price higher than that determined under the contract's terms on date of enactment. If the producer encounters production problems, he will be unlikely to correct those problems if the section 105(b)(1) price is insufficient to cover the costs of production enhancement work and also return a reasonable profit. Under such circumstances production will probably diminish and, at the point out-of-pocket expenses exceed revenues, the producer will be likely to abandon the well. The result of either abandonment or a decrease in the rate of production may be permanent loss of the unrecovered gas.

The origins of this pricing problem are unique to section 105⁵ and derive from the imposition of federal regulation on

⁴ In addition to being adjusted by the monthly inflation factor the section 102 maximum lawful price is also escalated monthly by a growth factor.

⁵ See discussion of section 106(b) *infra* in Section B.

contractual relationships that responded to and were created in a very different regulatory environment. The only previous limitations on renegotiation of intrastate contract prices were state law and any restrictions contained in the contract itself. Contracts frequently contained no pricing provision to account for production problems that might develop during the course of producing a well but that were unforeseen at the time the contract was entered into. However, if a purchaser deemed it in his best interests to compensate a producer for correcting such problems in order to obtain additional gas supplies he was free to renegotiate the contract. Thus, prior to the NGPA, a purchaser could assume that he would be able to protect his interests by using renegotiation as a safety valve in such situations.

The advent of the NGPA vitiated that assumption. In section 105(b)(1) Congress "froze" intrastate contract prices in order to protect purchasers of very low-priced intrastate gas from the increase in bargaining power accruing to intrastate producers under the NGPA as a result of their ability to sell in the interstate, as well as the intrastate, market free of prior regulatory restraint.⁶ However, prohibiting intrastate producers from charging increased prices also restricts their intrastate purchasers. A purchaser willing to increase the price he pays for gas by providing revenues for production enhancement work in order to insure an increase in gas supply is prevented from agreeing to pay that higher price unless the contract provides, by its terms, a mechanism for increasing the price above that in effect on date of enactment.

This legal restriction confronting producers of gas subject to section 105 does not apply to producers of interstate gas, *i.e.*, gas that is subject to sections 104 and 106(a).⁷ The maximum lawful prices for those sections are based on the just and reasonable rates under section 4 of the Natural Gas Act as of

April 1, 1977, adjusted for inflation. If the revenues produced by such prices are inadequate, the problem is attributable to the rate making methods used under the Natural Gas Act. Buyers and sellers who contracted in that regulatory environment are assumed to have taken these price restrictions into account when deciding to proceed with a transaction. Because any inadequacies in the maximum lawful prices for section 104 or section 106(a) derive from a different regulatory context than those in the section 105 price, we will not deal with them under this rule.⁸

B. The Commission's Solution

The Congress has authorized this Commission to permit higher maximum lawful prices if necessary to provide reasonable incentives to encourage production of gas that is produced at extraordinary risk or cost.⁹ The Commission has decided that an incentive is necessary in order to induce a producer of section 105 gas to perform production enhancement work. We have determined to permit an incentive equal to the lesser of the price under section 109, (a price category reserved by the Congress as a kind of residual or catch-all) or the renegotiated price. The section 109 price as of November 1980 is \$1.929.

Production enhancement work is performed in order to maintain or to increase production from a marginal well or to return an abandoned well to production.¹⁰ Typical production enhancement operations such as re-entries, recompletions, or the addition of

compression are not commonly regarded as presenting extraordinary risks or costs. In certain circumstances, however, cost becomes extraordinary because it cannot be recouped at the otherwise applicable section 105 price or because it is so high in relation to the price under the contract that the producer simply will not undertake the production enhancement operation in the absence of an incentive price. Nevertheless, the price necessary to induce a producer to perform these types of operations will prove, in almost every case, to be lower than the price that pipeline purchasers would pay for new supplies or that end users would pay for alternative fuels.

For all the above reasons, the Commission has decided to encourage such production enhancement work by providing an incentive price for gas subject to section 105, if such work is performed. As in the proposed rule, the incentive price provided in the final rule is the lesser of the section 109 price or the renegotiated price.

As a general matter the Commission will not at this time extend the incentive price for production enhancement gas to section 106(b) gas. We note that the Congress has provided other repricing mechanisms for such gas in section 106(c).¹¹ However, in order to avoid the anomalous result that would occur if the contract for production enhancement gas rolled over and resulted in a maximum lawful price lower than the incentive price available under this rule,¹² the Commission is amending its

⁶ We note that Congress has provided special repricing mechanisms for such gas in sections 104(b)(2) and 106(c). See note 10, *infra*.

⁷ Section 503, entitled "DETERMINATIONS FOR QUALIFYING UNDER CATEGORIES OF NATURAL GAS," sets out procedural rules regarding category determinations under the NGPA. That section discusses jurisdictional agency authority to make category determinations, the effect of such determinations, and review of such determinations by the Commission and the courts. Section 107(c) specifically provides for determinations to be made in accordance with section 503. Section 503(a)(1)(D) mirrors this provision. On the basis of this authority, the Commission provides in this rule for use of jurisdictional agency determinations to identify qualified production enhancement gas.

⁸ The final rule is intended to encourage production of natural gas from wells that require production enhancement work in order to maintain or to enhance production. Production enhancement, as we use the term, must be understood in the context of declining production rates. Production enhancement would include operations calculated to maintain the current rate of decline in production if that rate would otherwise accelerate. Enhancement operations are those intended to improve, *i.e.*, to retard, a declining production rate. A successful enhancement operation will increase the amount of gas reserves ultimately produced but need not brake completely the decline in production rate.

¹¹ Section 106(c) authorizes the Commission to establish a maximum lawful price in excess of that prescribed in section 106 for rollover contract gas. Such a price must be just and reasonable within the meaning of the Natural Gas Act. The Commission has issued proposed rules prescribing substantive and procedural guidelines for granting "special relief" under this section (as well as sections 104(b) and 109(b)) and will coordinate the final rule on special relief with the final rule for production enhancement gas. See *Procedures Governing Applications for Special Relief under Sections 104, 106 and 109 of the Natural Gas Policy Act of 1978*, Docket No. RM79-67, Notice of Proposed Rulemaking, issued August 14, 1979, (44 FR 49468, August 23, 1979); Notice of Request for Public Comment . . . issued January 16, 1980, (45 FR 5321, January 23, 1980); Notice of Proposed Rulemaking, issued May 9, 1980, (45 FR 31744, May 14, 1980).

¹² Under our current regulations for section 106(b), the maximum lawful price for qualified production enhancement gas in the month of rollover would be the higher of the otherwise applicable section 105 price or \$1.121, as of December, 1978, adjusted for inflation to the month of rollover. It is conceivable that an escalation clause in the original contract triggered sometime after the gas qualifies under the production enhancement rule could increase the section 105 price above the incentive price, in which case no decrease in the maximum lawful price would occur when the renegotiated "successor contract" rolled over. However, for the majority of gas subject to this rule, the original contract will contain no such provision, and, absent an

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⁶ Section 601(a)(1)(A), denies Natural Gas Act jurisdiction to any natural gas not committed or dedicated to interstate commerce as of November 8, 1978.

⁷ Section 104 of the NGPA provides maximum lawful prices for natural gas that was committed or dedicated to interstate commerce on November 8, 1978 and for which a just and reasonable rate under the Natural Gas Act was in effect on November 8, 1978 for the first sale of such gas.

Section 106(a) provides maximum lawful prices for natural gas that was committed or dedicated to interstate commerce on November 8, 1978 and that is sold under any "rollover contract. A rollover contract is any contract entered into on or after November 9, 1980 for the first sale of gas that was previously subject to a contract that expired at the end of a fixed term.

regulations in Subpart F of Part 271, concerning intrastate rollover contracts, to permit the producer to price his gas under section 106(b) at time of rollover by reference to the incentive price provided in this rule.¹³

C. How the Incentive Works

By the terms of the rule and for the reasons previously discussed, only gas sold under an existing intrastate contract or a successor contract can qualify for the incentive price. In addition, the production enhancement work to be encouraged must be commenced on or after May 29, 1980, the date the incentive price was first proposed in an open Commission meeting. We must assume that an incentive price was not necessary to induce a producer to engage in any production enhancement work commenced prior to the announcement of that price.

The producer must obtain an eligibility determination from the jurisdictional agency in order to receive the incentive price. He may obtain that determination before or after completing the production enhancement work but will be prohibited from charging and collecting the incentive price, on either an interim or a retroactive basis, until the work has been completed.

The Commission has crafted the eligibility requirements to insure that an incentive price is necessary for undertaking the production enhancement work and that the price itself is reasonable, and not an excessive incentive. The Commission wishes to be assured that the incentive price is available only for wells for which the section 105 maximum lawful price is insufficient to encourage application of production enhancement techniques now or in the near future, and for which the potential increase in gas production is large enough to insure that the increased cost to the pipeline purchasers and end users will not exceed the price they would have to pay for new supplies or alternative fuels. At the same time, the Commission has precluded from qualification, gas that is

produced as a result of production enhancement work that would have been performed absent the availability of the incentive price or that is performed only for the purpose of repricing the gas.

As the first of its safeguards the Commission has required parties to amend the contract in existence on November 9, 1978, prior to filing an application with the jurisdictional agency. The amendment must permit collection of an incentive price stated in the application, which cannot be greater than the section 109 price.¹⁴ This renegotiation requirement will provide the purchaser with an opportunity to resist paying the higher price if he is not reasonably assured that the production enhancement work will produce sufficient additional volumes to make the increase in cost economic.¹⁵ Although the assumption may not be valid in all cases, the Commission also believes that most purchasers will not agree to pay a higher price unless they are sure that the additional gas would not otherwise be produced because the cost of the production enhancement work is prohibitive at the existing price. Thus the renegotiated price is a test both of the necessity for an incentive and of the reasonableness of the incentive price.

Purchasers commonly make such assessments when they negotiate contracts. We do not believe that an intrastate purchaser will accede to the intrastate producer's attempts to renegotiate the contract for flowing gas merely because the producer wishes to receive the incentive price. It is significant to note that, prior to passage of the NGPA, producers and purchasers in unregulated intrastate markets were free to renegotiate their contracts. Experience shows that many of those contracts were not renegotiated, even in circumstances where the prices under new contracts were rapidly escalating.

In addition to filing a copy of the relevant portion of the amended contract with the jurisdictional agency, the producer must also secure an oath from the purchaser that he has a reasonable basis to believe the producer's statement that the production work is necessary, that it would not be performed absent the incentive price because of the inadequacy of the section 105 price and that the reserve and production estimates are reasonable.

The Commission views this purchaser oath as essential to the integrity of the

incentive pricing scheme because willingness to renegotiate a contract is not always coincident with a belief that the new price is necessary as a reasonable incentive. There may be a number of other reasons why a purchaser would be willing to pay a higher price for natural gas. Our intent in requiring the purchaser oath is to eliminate the possibility that gas will be repriced simply because of the producer's bargaining power.

In most cases purchasers are sufficiently familiar with the necessary information regarding a well's production capability and the costs or risks of enhancement work to know if a higher price is necessary for increasing gas production. If the purchaser has any hesitancy in making the statement, it is doubtful that we could determine that the incentive price sought by the applicant is necessary as a reasonable incentive under section 107.

The producer must file an oath statement that the section 105 price is inadequate, that the production enhancement work can reasonably be expected to enhance production and that the work would not be performed absent an incentive price. He must also estimate the well's current and enhanced rate of production as well as the increase in revenues to be expected from application of the incentive price and must use those estimates to determine whether the projected increase in revenues that is attributable solely to the projected increase in units of gas production exceeds a price per MMBtu equal to 200 percent of the maximum lawful price allowed for conventional, onshore development, i.e., the section 103 price.¹⁶ We are requiring this calculation because we have determined that, if the effective cost for any increases in production appears,

¹⁶The proposed rule would have set the unit cost cap at the price for imported crude oil. The Commission received a wide variety of comments concerning the proposed cap on the unit cost of incremental production. Many commenters supported this proposal by arguing that the cap would prevent economic waste, producer windfalls and unnecessary consumer costs. (These commenters endorsed the unit cost cap as support for their argument that the incentive price ceiling should be set higher than the section 109 price.) On the other hand, at least one commenter argued that the unit cost cap is shortsighted and should be deleted. This commenter stated that, even if the price of incremental volumes rises above the cost of foreign crude from time to time, the goal of displacing more expensive foreign oil over the long term is still advanced. According to the same argument we could allow the price of the incremental volumes to rise to a price many times that of foreign crude. We believe it appropriate, within the mandate of section 107, to establish a unit cost cap that allows as much foreign crude to be displaced as is possible while limiting the price of the gas to a level that is reasonable in the context of the NGPA.

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amendment to our rules for section 106(b), the gas will be remanded at the time of rollover to a price under the original contract terms that will, in many cases, be substantially lower than the incentive price provided under this rule. See discussion of price impact, *infra* in Section G.

¹³Technically, this amendment modifies our regulations for section 106(b). However, the amendment is being prescribed under our section 107 authority; it constitutes neither an interpretation of the term "expired contract" in section 106(b)(1)(A)(i) nor an exercise of our authority under section 106(c) to prescribe a higher maximum lawful price within the just and reasonable standard of the Natural Gas Act.

¹⁴If the fixed price is lower than the section 109 price, the contract price is the incentive price.

¹⁵We note that the unit cost cap establishes the upper limit on what the Commission considers economic.

prospectively, to exceed the commodity value of that incremental production, the higher maximum lawful price cannot be considered a reasonable incentive, even though the higher price is necessary to induce production enhancement efforts. (However, because the unit cost cap is a function of the difference between the existing section 105 price and the incentive price, a producer who would otherwise be disqualified may be able to satisfy the cost cap requirement by lowering his renegotiated price sufficiently below the section 109 price.)

In the recently issued final rule relating to tight formation gas,¹⁷ the Commission discussed the commodity value of natural gas and identified two benchmarks for determining that value. First, the Commission referenced the commodity value of such gas to the most recently available Btu-equivalent price for No. 2 fuel oil deliveries to electric utility facilities, which was \$5.78. Based on this Btu-equivalent price, the imputed commodity value of natural gas was obtained by subtracting the average cost of transporting gas from the wellhead to the user. The average transportation and distribution costs for natural gas were determined to be approximately \$1.00 per MMBtu; thus the commodity value of natural gas in relation to No. 2 fuel oil was estimated to be about \$4.78 per MMBtu. The Commission also noted that, as an alternative, the commodity value of natural gas could be established by reference to the price of imported Canadian or Mexican natural gas. The Commission determined that 200 percent of the section 103 price closely approximates the price of such imported gas.¹⁸

Based on the same reasoning, the Commission has decided to set the unit cost cap for incremental production at a price per MMBtu equal to 200 percent of the section 103 price. This cap does not represent the actual value of the incremental production. It merely establishes a ceiling above which any incentive price for incremental production can no longer be considered reasonable.

We have permitted a calculation based on a series of estimates, and have not required completion of the production enhancement work prior to application, in order to accelerate the qualification process while allowing the applicant to be certain that he may continue to qualify for the incentive price even if a project falls short of

production estimates that were reasonable when filed. We acknowledge that obtaining accurate estimates may be a problem. Nevertheless, we have decided to rely on the good faith of the parties in this regard. Should experience demonstrate that our reliance has been misplaced, the Commission will feel compelled to terminate the program.¹⁹

In order for a producer to qualify for the incentive price the jurisdictional agency must determine that there is a reasonable basis to conclude that the particular production enhancement work is necessary and that it can be expected to maintain or enhance production. We are relying on the jurisdictional agencies' knowledge regarding the production characteristics of the wells or zones in question and their technical expertise regarding the purpose and efficacy of the production enhancement techniques in enhancing production from those wells.

The jurisdictional agency must also examine the producer's production estimates in light of other information in the record in order to assure itself that those estimates are reasonable and that the effective cost of the incentive price does not exceed the price for new gas supplies or alternative fuels.

The Commission is comfortable at this time with its choice of an incentive price no higher than the section 109 price. Therefore, as a general matter, it is willing to accept the parties' judgments and oaths regarding the necessity for such an incentive in particular situations. The Commission will not, and the jurisdictional agency need not, inquire further concerning price, unless information or discrepancies in the record give cause for doubt as to the veracity of the producer's or purchaser's oaths.

D. Jurisdictional Agency Findings and Discretion

As a practical matter, the success of this rule in effecting the purpose for which it is intended rests with the jurisdictional agencies. We have provided latitude to the jurisdictional agencies in order to permit them to exercise their judgment in determining whether the incentive price is necessary as a reasonable incentive for the producer to undertake production enhancement work.

As we have indicated, what constitutes a reasonable incentive for production enhancement work, within

the meaning of section 107, depends on several variables: the applicable contract terms upon which the section 105 price is based, the increment in production to be expected from application of the production enhancement technique, and the cost or risk associated with use of that technique. The flexibility we have afforded the jurisdictional agencies reflects our belief that in the face of so many variables, a reliable basis for affirming the necessity and reasonableness of an incentive price cannot be established by rigid regulatory guidelines.

For example, we intend that this flexibility permit a jurisdictional agency to find that no incentive price is necessary for gas produced from a horizon above other producing horizons, if it determines that the producer would have produced the upper horizon anyway in the normal course of production. It might make a similar finding if a downhole pump were installed to lift liquid hydrocarbons, e.g., condensate, in order to increase gas production but the value of the condensate would, by itself, provide an incentive to installation of lift equipment. Similarly, if production enhancement work were performed on an oil well, ostensibly to increase production of associated gas, the gas might be denied the incentive price provided under this rule if the work would have been performed in any event to increase oil production.

A jurisdictional agency might also make a negative determination if it found that the filed estimates concerning incremental production were disproportionate to previously recorded production; or that the work performed was not within a defined category of production enhancement work; or that the stated or estimated cost of the production enhancement work is sufficiently low in relation to the section 105 price that it could not accept the producer's oath statement that the work would not have been performed in the absence of the incentive price.

E. The Production Enhancement Techniques

The production enhancement techniques specifically included in the final rule have been broadly defined in order to permit the jurisdictional agencies to be flexible in determining what types of projects should qualify under the final rule. Any attempt on our part to define these projects more narrowly could result in the exclusion of many deserving projects. In allowing this degree of flexibility we are relying

¹⁷ Docket No. RM79-76, issued August 15, 1980. (45 FR 56034, August 22, 1980).

¹⁸ The price for imported Canadian or Mexican natural gas was \$4.47 as of November 1980. Two hundred percent of the section 103 price was \$4.658 as of November 1980.

¹⁹ Moreover, the Commission may find an adequate basis in specific instances to reopen a favorable determination under § 275.205 and vacate the determination if information is disclosed which indicates that the estimates were not filed in good faith.

on the technical expertise of the jurisdictional agencies.

The proposed rule included, and requested comment on, five categories of production enhancement techniques. All have been included in the final rule. In addition, and in response to comments, we have added five other categories of production enhancement techniques. Should techniques that we have not considered in this rulemaking be brought to the attention of the Commission, the rule may be amended.²⁰

The first category of production enhancement work is re-entry into a well that has been plugged and abandoned.

The second category covers work performed in re-entering a well to drill deeper, or to sidetrack, to a different completion location. This category will usually apply whenever a well that was drilled in the past, and from which the drilling equipment has been removed, is re-entered for further drilling.

The third category is recompletion by reperforation of a zone from which natural gas has been produced or by perforation of a different zone.²¹ This category will apply whenever a well is perforated other than in the original completion location. The Commission is aware that a producer may perforate a new zone higher up the wellbore than the zone he is currently producing and then produce from both zones. Accordingly, if a well qualifies under this rule as a result of a "perforation of a different zone," only the gas produced from the new completion location will receive the incentive price. The producer will be responsible for separately identifying the gas from each completion location. We realize that, in most cases, the gas from separate completion locations will be produced through separate "stringers" and metered separately. However, if the gas is commonly metered, a reasonable allocation of production among the producing intervals or completions will be required.

²⁰ In this regard, the Commission will entertain properly filed petitions by interested parties for amendments to include additional production enhancement techniques in the rule. See § 1.7 (b) and (e) of the Commission's Regulations.

²¹ At least two commenters requested a clarification with respect to the second and third categories. They asked that the Commission clarify the proposed rule to provide that re-entry for deeper drilling, or sidetracking, to a different completion location (as opposed to a new completion location as provided in the proposed rule) and a recompletion by perforation of a different (as opposed to a new) zone would constitute production enhancement work. The Commission believes that this suggestion is consistent with the intent of the proposed rule. Accordingly, for clarification only, the words "new" in the second and third categories will be changed to read "different."

The fourth category is the repair or replacement of faulty or damaged casing, tubing or related downhole equipment. It should be emphasized that this category is intended to include major repair work only; routine maintenance, however costly, is not production enhancement work.²²

The fifth category is fracturing, acidizing or installing compression equipment. The Commission recognizes that production enhancement work involving compression will often affect more than one well. Activities that affect several wells would constitute production enhancement work with respect to each well sufficiently affected to meet the other requirements of this rule. We also note that leasing of compression equipment will be treated in the same manner as purchasing of such equipment, and that upgrading compression or adding further stages of compression will be considered to be installation of compression equipment.

Commenters requested the inclusion of a variety of other production enhancement techniques. In response, we have included the following additional categories.

The first is installation of equipment necessary for removal of excessive water, brine, or condensate from the wellbore in order to establish, continue or increase production from the well. The category would apply, for example, if any one of a variety of pumping techniques were used to remove large volumes of water in conjunction with the production of natural gas, including use of electrically powered submersible pumps and sucker rod surface pumps or plunger lifts. Other procedures would include installation of smaller than normal tubing to increase the velocity of the gas in order to enable it to "blow" the water out of the well, or the injection of foaming agents to change the water into a foam, reducing the fluid pressure and enable the gas to "blow" the foam out of the well.

The second addition covers workover operations designed to reduce production of excessive water or brine in order to establish, continue or increase production of gas from the well. For example, the perforations that are "watered-out" can be plugged with cement, and gas can then be produced

²² One commenter asked the Commission to consider inclusion of costly well maintenance projects as a category of production enhancement work. The scope of this rulemaking is limited to incentives for work that is included in the definition of production enhancement work. Operations that the Commission considers to be normal well maintenance have been excluded from that definition.

from other perforations or from new perforations.

The third addition concerns operations for disposing of water or brine, the presence of which prohibits or severely limits gas production from the well.

The fourth addition covers workover operations to control sand production in the wellbore, or to remove sand from the wellbore and downhole equipment in order to continue to produce gas from the well. This category can include the use of gravel packing and filtered tubing liners to keep the sand out of the tubing, or the pumping of an epoxy resin or other stabilizer into the wellbore to consolidate the sand around the wellbore. This category can also include replacement of a gravel packer or a tubing liner or the cleaning of a wellbore and application of epoxy resin.

The last technique included in the rule is "inert" gas injection, such as nitrogen injection.²³ The nitrogen can be compressed or liquified and injected into the reservoir to displace the hydrocarbon gas. Once injected into the reservoir, the nitrogen expands, either forcing hydrocarbon gas from the reservoir or removing obstructions that prevented the flow of gas into the wellbore. The Commission realizes that this last category, like compression, will often apply to more than one well. To the extent that a producer can demonstrate that a well is sufficiently affected by the inert gas injection to meet the other requirements of the rule, that well will qualify for the incentive price.²⁴

²³ In common industry parlance "inert" gas means that is noncombustible. Several commenters indicated that the section 109 price (or even a price as high as the section 102 price) would induce no work of this nature because of the extraordinary costs associated with the technique. The incentive price may be inadequate to encourage inert gas injection. However, we do not have an adequate basis in the comments to deal with this problem at this time. We will, therefore, leave its resolution to future proceedings.

²⁴ The technique of gas cycling was also suggested for inclusion as a production enhancement technique. Gas cycling is a technique for increasing the recovery of natural gas liquids and condensate from the reservoir. The technique involves the re-injection into the reservoir of natural gas, stripped of its liquids; the gas may have been produced from that zone or another zone. Sufficient reservoir pressure is thereby maintained in order to prevent natural gas liquids from condensing within the reservoir wellbore. Although this process will result in an increase in production from the reservoir, the majority of this increase will usually be composed of natural gas liquids and condensate. There may even be a net drop in natural gas production due to volume losses caused by the separation process, losses from injected volumes unrecoverable in the reservoir, or losses due to use of natural gas as fuel to power the separator and injection equipment. An additional problem results if the injected gas is from another producing zone. In this case it is difficult to determine accurately what volume of gas produced

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Although many comments recommended that the jurisdictional agencies be permitted to qualify for eligibility other, unlisted techniques, few supplied any guidelines regarding the nature of this determination or the extent of jurisdictional agency discretion. The Commission wishes to avoid the complexities attendant in qualifying production enhancement techniques on a case-by-case basis. As we have stated, however, we will remain receptive to appropriate petitions for addition by amendment, made under § 1.7 of our regulations.

F. The Incentive Maximum Lawful Price

The incentive maximum lawful price will frequently be the same as the renegotiated price agreed to by the parties. However, that price cannot be greater than the section 109 price.

In order to avoid allocation problems that would arise were the incentive price applied only to the incremental volumes produced as a result of production enhancement work, the Commission has decided to apply the incentive price to all gas produced from a well on which production enhancement work has been performed.²⁵ Repricing all of the gas rather than only the incremental production will also provide a measure of revenue certainty to the producer. Even if his estimates concerning the expected increment in production eventually prove to be inaccurate, or if the production enhancement work effects no increase in production at all, he can still be assured of that increase in revenues which results from repricing the current production.

The section 109 price has been chosen as the ceiling for the price incentives provided under this rule because, in the Commission's judgment, it is sufficiently high to encourage a large number of potential production enhancement projects and low enough to prevent a windfall for producers. However, many commenters requested an incentive price ceiling higher than the section 109 price. Most commenters supported their recommendation by arguing that a higher ceiling would promote production of even more volumes of gas.

We cannot disagree that an increase in the incentive price will produce some increase in the amounts of gas produced in response to that price. We do disagree that the wording of section

107(b), which limits the price to one necessary to provide reasonable incentives, permits incentive pricing based wholly on a supply-maximization rationale.

If the purpose of section 107(b) were, without qualification, to induce the maximum production of natural gas, the Commission could attempt to create a price sufficiently high that, from the perspective of the producer, even the most costly, unpromising production enhancement ventures would appear economically attractive. However, in determining what constitutes a reasonable incentive the Commission must balance the needs of suppliers and consumers. On balance, a reasonable incentive for production enhancement work is one that will produce additional gas supplies without requiring the consumer to pay unnecessary prices to obtain those supplies.

In the Notice of Proposed Rulemaking the Commission solicited data regarding projected increases in production that could be expected in response to different incentive prices. Unfortunately, the Commission has received no information that would permit it to quantify the potential supply responses to various hypothetical incentive prices.²⁶ Absent such information, the Commission is reluctant to increase the incentive price ceiling above the section 109 price.

We have looked to the statutory pricing scheme of the NGPA in order to determine what constitutes a reasonable incentive for purposes of section 107. Under Title I of the NGPA, the section 109 maximum lawful price is applicable, *inter alia*, to natural gas that was not committed or dedicated to interstate commerce on November 8, 1978, and that was not subject to any contract on November 8, 1978.²⁷ We view this as evidence that Congress considered the section 109 price to be an appropriate incentive to the production of any gas for which the price has not been established either under the Natural Gas Act or, if intrastate, by agreement of the purchaser and seller. The purchaser's inability to renegotiate a contract price now that he is subject to the restrictions imposed by section 105(b)(1) is tantamount to there being no contractually-established price to serve as a reference in pricing gas produced as the result of production enhancement efforts. The situations addressed under this rule and under section 109 are analogous. The section 109 price

appears to be an appropriate incentive price ceiling for purposes of this rule.

At the very least, the Commission can be assured that such a ceiling is not unreasonable when evaluated in the context of other Title I prices. Given the minimal amount of information that is available on the potential supply and price impacts of this rule, we are inclined to proceed on this rationale. Our choice of this incentive price ceiling does not preclude us from examining the actual response to that ceiling and from determining whether it continues to be appropriate.

G. The Potential Economic Impact of the Rule

In deciding whether to permit producers and purchasers of section 105 gas to renegotiate their existing contract prices in return for undertaking production enhancement efforts, the Commission has attempted to assess the economic impact of this rule in a number of important areas. First among these are the increased revenues to intrastate producers and the associated increased cost to intrastate consumers that will be generated by the incentive price. A second concern involves the potential impact of this rule on stimulation of additional supplies of natural gas. Finally, there is the question of the rule's distributional impact on the interstate and intrastate consumer markets.

The comments received by the Commission in this proceeding make it clear that the potential impact of this rule on consumer costs may be considerable. According to information provided by the Texas Independent Royalty Owners, in Texas nearly half the gas flowing in intrastate commerce sold for less than \$1.00 per MMBtu during the fiscal year ending August 31, 1979. Assuming that the situation in Texas is fairly typical of that in other producing states, this statistic suggests that, of the more than 10 trillion feet of natural gas currently flowing in intrastate commerce, as much as 5 trillion feet could be eligible for a price increase somewhere in the range of \$1.40 per MMBtu.²⁸ Therefore, in the unlikely event that all intrastate contracts now priced below \$1.00 per MMBtu were renegotiated up to the section 109 price, a gross increase of as much as 7 billion dollars could be effected in the annual payments made for gas subject to intrastate contracts. Additional costs would be imposed on intrastate consumers to the extent that

Footnotes continued from last page from the target reservoir is "native" to that reservoir. For these reasons, this technique will not be included as qualified production enhancement work.

²⁵ But note the exception in § 271.704(c)(1)(i)(B) for gas from a well producing from more than one zone.

²⁶ A few commenters labeled such projections as "inherently unquantifiable."

²⁷ Section 109(a)(3).

²⁸ The \$1.40 per MMBtu figure represents the difference between an assumed \$0.50 per MMBtu price for gas priced below \$1.00 per MMBtu and a maximum lawful price under section 109 of approximately \$1.90 per MMBtu.

contracts for intrastate gas currently selling above \$1.00 per MMBtu were also renegotiated up to the section 109 price.

Although the potential price impact of this rulemaking is very considerable, the Commission believes that the safeguards against abuse that have been included in the rule will minimize any unwarranted results. The rule permits a purchaser to avoid paying the higher price by refusing to renegotiate in the event he determines that it would not be in his economic interest to pay a higher price in order to encourage production enhancement work.

An example of the value of low-priced gas to an intrastate consumer may be of illustrative value. An electric utility or industrial user presently taking gas at the rate of 3,000 MMBtu's per day at a cost of \$.30 per MMBtu would pay 1.75 million dollars per year in additional costs if the price were renegotiated up to \$1.90 per MMBtu. Clearly, such a cost increase is of sufficient magnitude that the purchaser will not voluntarily submit to such higher prices unless the potential for increased supply appears substantial.

Alternatively, real costs may be imposed upon intrastate customers if they are precluded from contract renegotiations keyed to enhanced production activity. A purchaser of gas subject to a contract price may be unable to compel the producer to undertake costly production enhancement measures. Purchasers, in their discussions with producers, are in the best position to judge whether a price higher than the otherwise applicable section 105 price may be discouraging cost effective production stimulation efforts by the producer. The Commission is willing to allow purchasers to amend the price protections afforded them by section 105 where such renegotiation is in the purchaser's perceived self-interest.

The Commission's initiation of this rulemaking stems from its perception that the potential supply response to production enhancement initiatives is substantial. Despite the many differences that exist among natural gas production projects, all producing wells reach a stage in their production life where the cost of maintaining production exceeds the revenue stream from that well. If the price of natural gas is restrained below market levels, the point in the well's production life at which a producer will be unable to recover his out-of-pocket expenses will occur earlier than it would if the gas were sold at prices closer to its market value. The economic life of many wells currently producing intrastate gas could

be extended, in appropriate circumstances, if existing contract prices were permitted to increase.

The volume of additional supplies that will be elicited through production enhancement incentives provided in this rule cannot be estimated with any absolute certainty. The rule imposes no specific volumetric standard on the producer. Rather, the required oath statement and unit cost cap are designed to give guidance to both the seller and buyer on the presumed value of incremental gas supplies under current market circumstances. These provisions should insure the maximum economically practicable supply response to expenditures associated with production enhancement.

Finally, the Commission recognizes the possibility that the rule may make gas presently sold under intrastate contracts less accessible to interstate purchasers if the current purchaser seeks to obtain an extended supply commitment in return for consenting to the higher prices authorized by this rule. However, to the extent this rule elicits gas that would not otherwise be purchased, interstate market interests would be unaffected. Most gas subject to renegotiation is produced from wells that are at or near the end of their presently useful producing life. Thus, the Commission expects the rule's distributional impact on the interstate and intrastate markets to be relatively modest.

II. Summary of the Final Rule

A. Definition of Qualified Production Enhancement Gas

We have added to Subpart G of Part 271 of our regulations a new section, § 271.704, which defines "qualified production enhancement gas" and establishes a maximum lawful price for such gas. Paragraph (c)(1) of § 271.704 establishes five criteria which the jurisdictional agencies are to apply in identifying qualified production enhancement gas.

First, the jurisdictional agency must find that the gas is produced from a well (or a zone, in the case of multiple completion locations) on which production enhancement work was commenced, or will be commenced, on or after May 29, 1980. In order to make this finding, the jurisdictional agency must determine that the work constitutes qualified production enhancement work as described in paragraph (d)²⁹ and that the work was commenced on or after May 29, 1980.

²⁹ See discussion of production enhancement techniques beginning in Part I, Section E, *supra*.

Second, the jurisdictional agency must find that the gas is subject to a maximum lawful price under section 105.

Third, the jurisdictional agency must find that a renegotiated price is in effect for a first sale of the gas at the time of application. A renegotiated price is defined in paragraph (b)(3) as a price (not higher than the section 109 price) which was agreed to after the enactment of the NGPA in connection with production enhancement work which is the subject of an application under this rule.

In essence, the fourth criterion in the definition requires the jurisdictional agency to find that the requisite estimates and oath statements, regarding the necessity for and reasonableness of the incentive, are not contradicted by other information in the record.

Finally, the jurisdictional agency must find that the price for the increased production does not appear, prospectively, to exceed the commodity value of that incremental production. Clause (v) of paragraph (c)(1) sets forth the formula for making this calculation. The results must indicate that the projected increase in revenue, attributable solely to the projected increase in units of gas production, may not exceed a price per MMBtu equal to 200 percent of the maximum lawful price allowed for conventional, onshore development (i.e., the section 103 maximum lawful price) for the month in which the application is made.

The calculation will be based on production estimates filed with the application. The applicant must first estimate the total number of MMBtu's that would be produced from the well in the absence of production enhancement work over a five-year test period commencing with the month the application is made.³⁰ In doing so, the applicant must consider, at the time of application, the condition of the well and the rate of production absent production enhancement work and must then estimate total production for the next five years. The applicant must then estimate the total number of MMBtu's that would be produced from the well over the same five-year period, based on the assumption that the production enhancement work was completed on the date of application.³¹ Once these

³⁰ These estimates are based only on production of gas; oil, LNG or other liquid hydrocarbons are not to be included in the calculation.

³¹ These estimates may be made, and an eligibility determination received, before production enhancement work is commenced on the well. See discussion of Collection of the Incentive Price, *infra*, Section D.

estimates have been made, the "projected increase in units of production" can be calculated by subtracting the first estimate from the second.

In order to calculate the "projected increase in revenue," the applicant must multiply the number of MMBtu's that would be produced absent production enhancement work by the otherwise applicable maximum lawful price under section 105 as of the date of application. The applicant must then multiply the total number of MMBtu's that will be produced from the well after production enhancement work is completed by the section 109 price at the time of application. However, if the renegotiated price is less than the section 109 price and if it is also either a fixed price or a percentage of the section 109 price, the applicant may base the calculation on the renegotiated price rather than the section 109 price. The projected increase in revenue to be derived under the rule is determined by subtracting the first product from the second product.

Finally, the applicant must divide the projected increase in revenue by the projected increase in units of production in order to determine whether the price per MMBtu for the incremental production exceeds 200 percent of the section 103 price as of the month the application is filed.

If the jurisdictional agency makes all five findings, the natural gas will qualify as production enhancement gas. If the gas receives this determination, it is subject to the maximum lawful price specified in paragraph (a) of § 271.704.

B. The Incentive Price

The incentive price set forth in § 271.704(a) is the lesser of the section 109 maximum lawful price or the renegotiated price.

The final rule adopts the requirement in the proposal that a newly negotiated price be in effect at the time the producer files for a determination. (However, the definition of that price is changed so that it simply requires renegotiation after November 9, 1978, in connection with the production enhancement work.) The determination is keyed to the particular renegotiated price,³² evidence of which must be included in the application. Therefore, if the contract is subsequently amended to modify that price a new application and a new jurisdictional agency determination will be required.

³² We note that this may be a single price or a set of fixed prices such as a price equivalent to a certain percentage of the section 109 price.

Under the filing requirements in § 274.205(f) the producer must submit that portion of the sales contract which authorizes collection of the incentive price established in § 271.704. In most instances parties to the contract will have to amend their contract before filing an application with the jurisdictional agency. In such cases the filing will consist of the contract amendment drafted in response to the availability of the incentive price under this rule.

Section 271.704(a)(3) provides that the increase in the price paid for the natural gas by reason of this rule will not result in the elimination of price controls under section 121(a)(3) of the NGPA. The Commission does not believe that Congress intended it to deregulate natural gas subject to section 105 which, but for the effect of the final rule, would not be sold for a price in excess of \$1 on December 31, 1984. Elimination of price controls under that section will occur only if, and when, such elimination would have occurred based on the maximum lawful price that would have been applicable but for this rule.

Because the definition of qualified production enhancement gas requires that the gas be subject to a maximum lawful price prescribed by Subpart E of Part 271, i.e., the section 105 price, once the contract under which it is sold rolls over, the gas is outside the scope of § 271.704. In order to permit a producer to continue to collect an incentive price for gas that previously qualified under § 271.704, we have amended our regulations regarding the maximum lawful price for gas subject to section 106(b). For purposes of determining the maximum lawful for such gas under § 271.602 of our regulations, the maximum lawful price paid under the expired contract, in the month in which the rollover contract becomes effective, will be deemed to include any amount paid by reason of qualification under the final rule in § 271.704.

C. Filing Requirements

The filing requirements are provided in new paragraph (f) of § 274.205. The applicant must file an FERC Form No. 121; a detailed statement describing the production enhancement work; an itemized statement of the costs incurred or to be incurred in performing the work (and invoices, where appropriate); the unit cost cap calculation and related production estimates; that portion of the contract which authorizes collection of the incentive price; and, if the jurisdictional agency requires, certified copies of records upon which the applicant has relied.

In addition, the applicant must include separate oath statements by himself and the purchaser. The applicant must file a statement, under oath, that the production enhancement work is necessary, and can be reasonably expected, to enhance production; that the section 105 maximum lawful price does not provide an adequate incentive for the performance of the production enhancement work; and that, but for the availability of a price at least as high as the renegotiated price, the production enhancement work would not have been or will not be performed.

The applicant must also state that the production enhancement work was not commenced before May 29, 1980; that to the best of his knowledge and belief, the production estimates that are included in the application are reasonable; and that he has no knowledge of any information inconsistent with the filed statements and estimates.

The purchaser must state under oath that, to the best of his knowledge and belief, there is a reasonable basis for the statements and estimates made by the applicant. The purchaser must also state that he has no knowledge of information not described in the application that is inconsistent with the statements made by the applicant.

D. Collection of the Incentive Price

A producer may choose to perform production enhancement work on a well before filing an application for an eligibility determination. Under §§ 273.202 and 273.203, such a producer may make interim collections of the incentive price for all deliveries of gas made after the date the application is filed with the jurisdictional agency. In addition, we have amended § 273.204(a)(1) to permit collection of the incentive price retroactive to the date that the qualifying production enhancement work was completed.

On the other hand, if the producer so chooses, he may apply for and receive an eligibility determination before completing, or even commencing, the production enhancement work. Under such circumstances, § 271.704(a)(2) prevents the producer from charging the incentive price, on either an interim or a retroactive basis, before the production enhancement work upon which the application is based has been completed and the producer has given written notice to the purchaser stating that the production enhancement work has been completed.

III. Environmental Impact

The Commission staff has completed an environmental assessment of this rule and has concluded that establishing

an incentive price would not constitute a major federal action significantly affecting the quality of the human environment. An environmental impact statement is not required.

In the environmental assessment, the staff identified a potential for impact of fracturing operations on fresh water aquifers. In order to determine whether further limitations to qualification are necessary in order to protect such fresh water aquifers, we will monitor environmental data that we will require from applicants regarding fracturing operations. However, we emphasize that, as the rule is currently written, the five criteria for qualification do not include any environmental standards and that information on the potential environmental impact of a project will not be used to disqualify a well for the incentive price.

If an application is based to any extent on the performance of fracturing operations, the applicant will be required to file specified information regarding the environmental effects of the fracturing operations. However, the jurisdictional agency may waive this filing requirement if it determines that there exists in the state an adequate program reasonably designed to assure no damage to fresh water aquifers.

We will review any filed environmental information at the time that the jurisdictional agency forwards the notice of determination to us. We do not intend to use the information to disqualify a particular well after the production enhancement work has been performed on it. We will use this information, however, in order to determine the necessity of amending the rule.

IV. Public Procedures and Effective Date

These regulations were originally proposed for comment on July 25, 1980, in Docket No. RM80-50 (45 FR 51219, August 1, 1980). For 30 days thereafter comments were received, and on August 26, 1980 and September 4, 1980, two public hearings were held on these regulations. By this process the Commission has complied with 5 U.S.C. § 553 and with section 502(b) of the NGPA, which requires that, "[t]o the maximum extent practicable," an opportunity for the oral presentation of data, views and arguments be afforded for certain regulations under the NGPA. The regulations contained in this order rest upon consideration given to the information received during the above-described notice, comment, and hearing process. The Commission finds that further notice and public procedure with respect to these regulations are unnecessary.

Sections 271.602(c), 271.701(b), 271.704, 273.204(a)(1)(iii) and 274.205(f) are being issued as final regulations effective December 15, 1980.

(Department of Energy Organization Act, 42 U.S.C. §§ 7107-7352; E.O. 13009, 42 Fed. Reg. 46267; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3422)

In consideration of the foregoing, Subparts F and G of Part 271, Subpart B of Part 273, and Subpart B of Part 274, Subchapter H, Chapter I, Title 18 of the Code of Federal Regulations are amended as set forth below, effective December 15, 1980.

By the Commission. Commissioner Sheldon concurring.

Kenneth F. Plumb,
Secretary.

1. Section 271.602 is amended by adding a new paragraph (c) to read as follows:

§ 271.602 Maximum lawful price.

(c) *Qualified production enhancement gas.* For purposes of paragraph (a)(1)(i) of this section, the maximum lawful price, per MMBtu, paid under the expired contract is deemed to include any amount paid by reason of a maximum lawful price allowed under § 271.704 (relating to qualified production enhancement gas.)

2. Section 271.701 is amended by adding a new paragraph (b) to read as follows:

§ 271.701 Applicability.

(b) *Qualified production enhancement gas.*

3. Part 271 is further amended in the table of contents and in the text of the regulations by adding a new § 271.704 to Subpart G to read as follows:

§ 271.704 Qualified production enhancement gas.

(a) *Maximum lawful price for qualified production enhancement gas.*

(1) The maximum lawful price, per MMBtu, for the first sale of qualified production enhancement gas shall be the lesser of:

(i) The renegotiated price stated in the application; or

(ii) The section 109 price.

(2) *Requirement of completed production enhancement work.* If the production enhancement work has not been completed on or before the date the application is filed, the maximum lawful price provided in paragraph (a)(1) of this section shall not apply until the production enhancement work is completed and the seller has given written notice to the purchaser stating

that the production enhancement work upon which the application for determination of eligibility is based, has been completed. The applicant must retain a copy of this notice in his records for a period of three years after the month in which the first sales priced under this section occurred.

(3) *Elimination of price controls.* For purposes of determining the price paid, under section 121(a)(3) of the NGPA, any amount paid solely by reason of a maximum lawful price allowed by this section shall be disregarded.

(b) *Definitions.* For purposes of this subpart:

(1) "Qualified production enhancement gas" means natural gas that a jurisdictional agency has determined in accordance with Parts 274 and 275 meets the qualification requirements in paragraph (c) of this section.

(2) "Production enhancement work" means an operation or installation of equipment described in paragraph (d) of this section.

(3) "Renegotiated price" means a price (not in excess of the section 109 price) agreed to after November 9, 1978, in connection with the production enhancement work which is the subject of an application under this section.

(4) "Section 109 price" means the maximum lawful price specified for Subpart I of Part 271 in Table I of § 271.101(a).

(c) *Qualified production enhancement gas.* For purposes of this section:

(1) *Qualified production enhancement gas is natural gas:*

(i) Which is produced:

(A) From a well on which production enhancement work (other than production enhancement work described in paragraph (d)(3) of this section) was commenced on or after May 29, 1980; or

(B) From a zone that is perforated in accordance with paragraph (d)(3) of this section on or after May 29, 1980;

(ii) For which a maximum lawful price prescribed by Subpart E of Part 271 applies (but for this section);

(iii) For which a renegotiated price is applicable;

(iv) For the production of which there is a reasonable basis, grounded in part on the amount of the investment, to conclude that:

(A) The price prescribed in paragraph (a) of this section is necessary as a reasonable incentive; and

(B) But for the availability of the price prescribed in paragraph (a) of this section, the production enhancement work would not have been performed or will not be performed; and

(v) The production of which (as calculated by the seller for a five year period beginning from the month of application ("test period"), based on estimates filed pursuant to § 274.205(f)(4)) will result in a projected increase in revenue which, when divided by the projected increase in units of production, does not exceed 200 percent of the maximum lawful price specified for Subpart C of Part 271 in Table I of § 271.101(a) for the month that the application is filed.

(2) "Projected increase in revenue" means:

(i) The product of (A) the estimated units of gas production (MMBtu's) which would be produced from the well during the test period if production enhancement work has been completed on the day that the application is filed, times (B) the section 109 price (unless paragraph (c)(4) of this section otherwise permits) for the month that the application is filed, less

(ii) The product of (A) the estimated units of gas production (MMBtu's) which would be produced from the well during the test period if the production enhancement work is not performed, or had not been performed, times (B) the maximum lawful price otherwise applicable to natural gas from the well as of the date the application is filed.

(3) "Projected increase in units of production" means:

(i) The estimated units of gas production (MMBtu's) which would be produced from the well during the test period if the production enhancement work had been completed on the day that the application is filed, less

(ii) The estimated units of gas production (MMBtu's) which would be produced from the well during the test period if the production enhancement work is not performed, or had not been performed.

(4) For purposes of paragraph (c)(2)(i)(B) of this section, if the renegotiated price is a fixed price or a percentage of the section 109 price, such renegotiated price (as of the date of application) may be substituted for the section 109 price in making the determination required in paragraph (c)(2) of this section.

(d) *Production enhancement work defined.* For purposes of this section, "production enhancement work" means any work that is performed for one or more of the following purposes:

(1) Re-entry into a well which has been plugged and abandoned.

(2) Re-entry into a well for the purpose of deeper drilling, or sidetracking, to a different completion location.

(3) Recompletion by reperforation of a zone from which natural gas has been produced or by perforation of a different zone.

(4) Repair or replacement of faulty or damaged casing, tubing or related downhole equipment.

(5) Fracturing, acidizing or the installing of compression equipment.

(6) Installing equipment necessary for removal of excessive water, brine or condensate from the wellbore in order to establish, continue or increase production of gas from the well.

(7) Workover operations to reduce excessive water or brine production in order to establish, continue or increase production of gas from the well.

(8) Operations to dispose of water or brine produced from the well, the presence of which prevents or severely limits gas production from the well.

(9) Workover operations to reduce excessive sand production or operations to remove excessive sand from the wellbore in order to continue production of gas from the well.

(10) Injection of nitrogen gas or other inert gas necessary to establish, continue or increase production of gas from the reservoir.

(e) *Cross reference.* For the rule establishing the maximum lawful price for qualified production enhancement gas which becomes subject to an intrastate rollover contract, see § 271.602(c).

4. Section 273.204(a)(1) is amended by adding a new clause (iii) to read as follows:

§ 274.204 Retroactive collection after final determination.

(a) *General Rule.* * * *

(1) * * *

(iii) in the case of qualified production enhancement gas (as defined in § 271.704(c)), the amount of such excess may be computed, charged, and collected for first sales of such natural gas delivered on or after the date that the production enhancement work was completed.

5. Section 274.205 is amended by adding a new paragraph (f) to read as follows:

§ 274.205 High-cost natural gas.

* * *

(f) *Qualified production enhancement gas.* A person seeking a determination for purposes of § 271.704 that natural gas is qualified production enhancement gas shall file with the jurisdictional agency an application which contains the following items:

(1) FERC Form No. 121;

(2) A detailed statement describing the production enhancement work that

has been performed on the well, including the dates such work was commenced and completed, or that will be performed on the well;

(3) An itemized statement of costs incurred in performing the production enhancement work described in § 271.704(d), including copies of invoices and bills for such work or, if the work has not yet been completed, estimates of such cost;

(4) A statement estimating, for the five year period beginning from the month in which the application is filed, the units of gas production (MMBtu's) that:

(i) Would be produced from the well if the production enhancement work had been completed on the day that the application is filed; and

(ii) Would be produced from the well if the production enhancement work is not performed or had not been performed;

(5) The calculation, based on the estimates required by paragraph (f)(4) of this section, that is required by § 271.704(c)(1)(v);

(6) The renegotiated price and a copy of that portion of the sales contract that authorizes collections of such price;

(7) A statement by the applicant, under oath, that:

(i) The production enhancement work is necessary, and can be reasonably expected, to enhance production;

(ii) The maximum lawful price that would be applicable but for qualification of the gas under § 271.704, does not, or will not, provide adequate incentive for the performance of the production enhancement work;

(iii) But for the availability of a price at least as high as the renegotiated price specified in subparagraph (6), the production enhancement work would not have been or will not be performed;

(iv) The production enhancement work was not commenced before May 29, 1980;

(v) To the best of the applicant's knowledge and belief, the estimates required by paragraph (f)(4) of this section are reasonable; and

(vi) The applicant has no knowledge of any other information not described in the application which is inconsistent with these statements and estimates;

(8) A statement by the purchaser, under oath, that to the best of the purchaser's knowledge or belief:

(i) There is a reasonable basis for the statements and estimates made by the applicant pursuant to this paragraph; and

(ii) The purchaser has no knowledge of any information not described in the application which is inconsistent with such statements and estimates; and

(9)(i) If the application is based to any extent on fracturing operations described in § 271.704(d)(5), a statement that:

(A) Describes the minimum separation between the target production zone and fresh water aquifers which are, or are expected to be, used as domestic or agricultural water supplies; and

(B) Identifies the measures that have been, or will be, taken by the applicant to protect the quality of such fresh water aquifers and to protect the integrity of the separating strata between the target production zone and the fresh water aquifers if the fracturing operations might result in fluid communication between these formations;

(ii) The jurisdictional agency may waive the requirements of paragraph (f)(9)(i) of this section if it determines that the state has a program reasonably designed to assure that no damage will result, from fracturing operations, to fresh water aquifers which are, or are expected to be, used as domestic or agricultural water supplies; and

(10) If the jurisdictional agency so requires, certified copies of records upon which the applicant relied, including copies of the jurisdictional agency's official files.

[FR Doc. 80-36586 Filed 11-21-80; 8:45 am]

BILLING CODE 6450-85-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 80-058]

Drawbridge Operation Regulations, Manasquan River, N.J.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the New Jersey Department of Transportation, the Coast Guard is changing the regulations governing the Route 70 drawbridge across the Manasquan River, mile 3.4, Brielle, Monmouth County. This change will allow the draw to remain closed to marine traffic from 11 p.m. to 7 a.m. The New Jersey Department of Transportation made this request because of a steady decrease in requests for opening the draw during this period. This action will relieve the bridge owner of the burden of having a person available to open the draw during these hours while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This amendment is effective on December 29, 1980.

FUR FURTHER INFORMATION CONTACT:

William C. Heming, Bridge Administrator, Aids to Navigation Branch, Bldg. 135A, Governors Island, NY 10004, (212-668-7165).

SUPPLEMENTARY INFORMATION: On May 27, 1980, the Coast Guard published a proposed rule (45 FR 35351) concerning this amendment. The Commander, Third Coast Guard District, also published this proposal as Public Notice 3-413 dated May 23, 1980. Interested persons were given until July 1, 1980 to submit comments.

Drafting Information

The principal persons involved in drafting this rule are: Richard A. Gomez, Project Manager and Lieutenant Bruce H. Tobey, Project Attorney, Third Coast Guard District.

Discussion of Comments

Two comments were received, one opposed the proposal and one had no objection. The objecting party felt the draw should be unmanned during the week and manned during the weekends. The Commander, Third Coast Guard District, evaluated this comment and concluded that due to the limited amount of openings during an entire week from 11 p.m. to 7 a.m. it would not serve to benefit but rather impose a greater burden on navigation.

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended by revising § 117.225(f)(6) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.225 Navigable waters in the State of New Jersey; bridges where constant attendance of drawtenders is not required.

* * * * *

(f) * * *

(6) Route 70 Bridge across the Manasquan River At Brielle, Monmouth County, New Jersey. From 11 p.m. to 7 a.m. the draw need not open to navigation. At all other times the draw shall open on signal.

* * * * *

(33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: November 3, 1980.

R. I. Price,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 80-36575 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD 80-48]

Drawbridge Operation Regulations; Reynolds Channel, N.Y.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the County of Nassau, New York, the Coast Guard is changing the regulations governing the operation of the Long Beach drawbridge across Reynolds Channel, mile 4.7. This change will require at least four hours notice from midnight to 7 a.m. The County of Nassau made this request due to a steady decrease of openings of the draw during this period. This action will relieve the bridge owner of the burden of having a person available to open the draw during these hours while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This amendment is effective on December 29, 1980.

FOR FURTHER INFORMATION CONTACT:

William C. Heming, Bridge Administrator, Aids to Navigation Branch, Third Coast Guard District, Bldg. 135A, Governors Island, New York, NY 10004 (212-668-7165).

SUPPLEMENTARY INFORMATION: On May 5, 1980, the Coast Guard published a proposed rule (45 FR 29594) concerning this amendment. The Commander, Third Coast Guard District, also published this proposal as Public Notice 3-401 dated May 7, 1980. Interested persons were given until June 19, 1980 and June 30, 1980 respectively, to submit comments.

Drafting Information

The principal persons involved in drafting this rule are: Richard A. Gomez, Project Manager and Lieutenant Bruce H. Tobey, Project Attorney, Third Coast Guard District.

Discussion of Comments

Four comments were received, two opposed the change and two had no objection. Those opposed felt that a four hour notice was too long and requested it be reduced to two hours. The Commander, Third Coast Guard District, evaluated this suggestion but chose not to adopt it. This decision was based on the unnecessary burden a two hour notice period would place on the bridge owner in arranging infrequently requested openings during the hours of midnight to 7 a.m. without further benefiting the interests of navigation. During 1979 there were only 3 openings from midnight to 7 a.m.

In consideration of the foregoing, Part 117 of the Code of Federal Regulations is

amended by revising § 117.180(j) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.180 Long Island, New York Inland Waterway from East Rockaway Inlet to Shinnecock Canal; bridges.

(j) Long Beach Bridge across Reynolds Channel. The draw shall open on signal except:

(1) From midnight to 7 a.m. the draw need open only if at least four hours notice is given; and

(2) From 3 p.m. to 8 p.m. on Memorial Day, Independence Day, Labor Day and Saturdays and Sundays from May 15 through September 30, the draw need open only on the hour and half hour.

(33 U.S.C. 499, 49 U.S.C. 1655(g)(2), 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: November 3, 1980.

R. I. Price,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 80-36576 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD 80-060]

Drawbridge Operation Regulations; Cheesequake Creek, N.J.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the New Jersey Department of Transportation, the Coast Guard is changing the regulations governing the operation of the Route 35 drawbridge across Cheesequake Creek, mile 0.0 at Morgan, New Jersey, to allow the draw to remain closed to marine traffic from 11 p.m. to 7 a.m. during the months of December, January, February and March. The New Jersey Department of Transportation has made this request because of infrequent openings during the aforementioned period. This action will relieve the bridge owner of the burden of providing full-time drawtenders during these periods while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This amendment is effective on December 29, 1980.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Aids to Navigation Branch, Third Coast Guard District, Bldg. 135A, Governors Island, NY 10004 (212-668-7165).

SUPPLEMENTARY INFORMATION: On May 27, 1980, the Coast Guard published a

proposed rule (45 FR 35350) concerning this amendment. The Commander, Third Coast Guard District, also published this proposal as Public Notice 3-411 dated May 23, 1980. Interested persons were given until July 1, 1980 to submit comments.

Drafting Information

The principal persons involved in drafting this rule are: Richard A. Gomez, Project Manager and Lieutenant Bruce H. Tobey, Project Attorney, Third Coast Guard District.

Discussion of Comments

No comments were received.

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended by revising § 117.215(j)(4) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.215 Navigable streams flowing into Raritan Bay (except Raritan River and Arthur Kill), the Shrewsbury River and its tributaries and all inlets on the Atlantic Ocean including their tributaries and canals between Sandy Hook and Bay Head, N.J.; bridges.

(j) The general regulations contained in paragraphs (a) to (g) inclusive, of this section apply to all bridges except as modified by the special regulations contained in this paragraph.

(4) New Jersey Route 35 drawbridge across Cheesequake Creek at Morgan, South Amboy, N.J. The draw shall open on signal except:

(i) From 11 p.m. to 7 a.m. during the months of December, January, February and March the draw need not open to navigation; and

(ii) From 7 a.m. to 7 p.m. daily from May 15 through October 15 the draw need be opened only on the hour.

(33 U.S.C. 499, 49 U.S.C. 1655(g)(2), 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: November 3, 1980.

R. I. Price,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 80-36577 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD 80-059]

Drawbridge Operation Regulations; Barnegat Bay, N.J.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the New Jersey Department of Transportation, the Coast Guard is changing the regulations governing the Route 37 drawbridge across Barnegat Bay, Mile 14.1, New Jersey Intracoastal Waterway at Island Heights. This change would allow the draw to remain closed to marine traffic from 11 p.m. to 7 a.m. during the months of December, January, February and March. The New Jersey Department of Transportation has made this request due to the infrequent openings during the aforementioned period. This action will relieve the bridge owner of the burden of having a person constantly available to open the draw while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This amendment is effective on December 29, 1980.

FOR FURTHER INFORMATION CONTACT:

William C. Heming, Bridge Administrator, Aids to Navigation Branch, Third Coast Guard District, Bldg. 135A, Governors Island, NY 10004 (212-668-7165).

SUPPLEMENTARY INFORMATION: On May 27, 1980, the Coast Guard published a proposed rule (45 FR 35349) concerning this amendment. The Commander, Third Coast Guard District, also published this proposal as Public Notice 3-412 dated May 23, 1980. Interested persons were given until July 1, 1980 to submit comments.

Drafting Information

The principal persons involved in drafting this rule are: Richard A. Gomez, Project Manager and Lieutenant Bruce H. Tobey, Project Attorney, Third Coast Guard District.

Discussion of Comments

No comments were received.

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended by revising § 117.220(p) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.220 New Jersey Intracoastal Waterway and tributaries; bridges

(p) New Jersey Route 37 Bridge across Barnegat Bay. The draw shall open on signal except:

(1) From 11 p.m. to 7 a.m. during the months of December, January, February and March the draw need not open to navigation; and

(2) From 10 a.m. to 2 p.m. on Saturdays, Sundays and holidays, from Memorial Day through Labor Day the draw need open only on the hour and half hour, except that it shall open at

any time for the passage of vessels with tows during such periods.

[33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3)]

Dated: November 3, 1980.

R. I. Price,

Vice Admiral, U.S. Coast Guard, Commander,
Third Coast Guard District.

[FR Doc. 80-36578 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD 80-44]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, (AIWW), Palm Beach County, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Town of Palm Beach, the Coast Guard is amending the regulations governing the operations of the Flagler Memorial Bridge, mile 1021.9, Royal Park Bridge, mile 1022.6, and Southern Boulevard Bridge, mile 1024.7, all across the Atlantic Intracoastal Waterway. Operating restrictions on the Flagler Memorial and Royal Park Bridges that are presently in effect from December 1 through April 30, would be extended to November 1 through May 31. The year-round restrictions in effect on the Southern Boulevard Bridge would be reduced to November 1 through May 31. These amendments will provide closed periods Monday through Friday during peak vehicular traffic. They are being made because of significant increases in vehicular traffic during these periods on the Flagler Memorial and Royal Park Bridges, while there has been an overall decrease in vehicular traffic on the Southern Boulevard Bridge. This action will relieve vehicular traffic during the morning and evening rush hours and establish openings during the normal working hours, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This amendment is effective on December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Kretschmer, Bridge Administrator, Bridge Section (OAN), Room 1006, Federal Building, 51 Southwest First Avenue, Miami, Florida 33130, telephone: (305) 350-4108.

SUPPLEMENTARY INFORMATION: On May 12, 1980, the Coast Guard published a proposed rule (45 FR 31132) concerning this amendment. The Commander, Seventh Coast Guard District also published these proposals as a public notice dated May 16, 1980. Interested

persons were given until June 13, 1980 and June 20, 1980 to submit comments.

Drafting information: The principal persons involved in drafting this rule are: Ensign Jane L. Hamilton, Bridge Administration Officer, Office of Aids to Navigation and Lieutenant John M. Griesbaum, Office of Commander, Seventh Coast Guard District, Legal Office.

Discussion of Comments

A total of 294 comments were received; 286 supported the proposal and eight were in opposition. Those opposed, addressed three areas of concern: The proposed regulations would restrict the movement of waterborne traffic and favor vehicular traffic; the existing regulations are adequate to meet the needs of both waterborne and vehicular traffic; the minimum vertical clearance on the bridges should be raised. These objections have some validity; however, with a scheduled opening during the closed periods, it is felt that vessel operators can adjust their schedules to avoid conflicts and significant delays during the closed periods. Traffic studies show that there is a significant increase of vehicular traffic during peak hours and that the delays evolving from bridge openings are great enough to warrant these additional restrictions. The alternative of raising the bridges is considered unfeasible due to the cost involved in such an undertaking.

The daily closed periods for the Southern Boulevard Bridge that are found in the existing regulations have been retained in these final rules. These differ from the closed periods that were proposed for this bridge. Traffic studies showed that no change was necessary. In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended as set forth below:

1. By revising § 117.440 to read as follows:

§ 117.440 Lake Worth, AIWW, mile 1021.9, Flagler Memorial Bridge, SR A-1-A, Palm Beach, Florida.

(a) From November 1 to May 31, Monday through Friday, excluding Federal holidays, except as provided in paragraph (b) of this section, the draw need not open from 8 a.m. to 9:30 a.m. and from 4 p.m. to 5:45 p.m.; however, the draw shall open at 8:30 a.m. and 4:45 p.m., if any vessels are waiting to pass. From 9:30 a.m. to 4 p.m., the draw need open only on the hour and half hour if any vessels are waiting to pass. At all other times the draw shall open on signal.

(b) The draw shall open at any time for passage of public vessels of the United States, tugs with tows, or vessels in distress. The opening signal from these vessels is four blasts of a whistle, horn, or by shouting.

(c) The owner of or agency controlling this bridge shall post, on both sides of the bridge, signs that state the conditions of this regulation. These signs shall be of such size that they may be easily read from an approaching vessel at any time.

2. By revising § 117.440a to read as follows:

§ 117.440a Lake Worth, AIWW, mile 1022.6, Royal Park Bridge, SR 704, Palm Beach, Florida.

(a) From November 1 through May 31, Monday through Friday, excluding Federal holidays, except as provided in paragraph (b) of this section, the draw need not open from 8 a.m. to 9:30 a.m. and from 3:30 p.m. to 5:45 p.m.; however, the draw shall open at 8:45 a.m., at 4:15 p.m. and 5 p.m., if any vessels are waiting to pass. From 9:30 a.m. to 3:30 p.m., the draw need open only on the quarter and three-quarter hour if any vessels are waiting to pass. At all other times the draw shall open on signal.

(b) The draw shall open at any time for the passage of public vessels of the United States, tugs with tows, or vessels in distress. The opening signal from these vessels is four blasts of a whistle, horn, or by shouting.

(c) The owner of or agency controlling this bridge shall post, on both sides of the bridge, signs that state the conditions of this regulation. These signs shall be of such size that they may be easily read from an approaching vessel at any time.

3. By adding a new § 117.440b immediately after § 117.440a to read as follows:

§ 117.440b Lake Worth, AIWW, mile 1024.7, Southern Boulevard Bridge, SR 700/80, Palm Beach, Florida.

(a) From November 1, through May 31, Monday through Friday, excluding Federal holidays, except as provided in paragraph (b) of this section; the draw need not open from 7:30 a.m. to 9:00 a.m. and from 4:30 p.m. to 6:30 p.m.; however, the draw shall open at 8:15 a.m. and 5:30 p.m. if any vessels are waiting to pass. At all other times the draw shall open on signal.

(b) The draw shall open at any time for passage of public vessels of the United States, tugs with tows, or vessels in distress. The opening signal from these vessels is four blasts of a whistle, horn, or by shouting.

(c) The owner of or agency controlling this bridge shall post, on both sides of the bridge, signs that state the conditions of this regulation. These signs shall be of such size that they may be easily read from an approaching vessel at any time.

(33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(g)(3))

Dated: November 3, 1980.

B. L. Stabile,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 80-36580 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 150

[CGD 76-170a]

Casualty Reporting Requirements

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule amends the casualty report requirement for deepwater ports by adding a diving casualty as a reportable incident, and by increasing the monetary damage criterion to \$25,000 for incidents involving vessels. This action provides for a more efficient casualty reporting system by making deepwater ports casualty reporting criteria compatible with other Coast Guard casualty reporting criteria.

EFFECTIVE DATE: This rule is effective on January 1, 1981.

FOR FURTHER INFORMATION CONTACT:

CDR H. T. Blomquist, Office of Merchant Marine Safety (G-MMI/24), Room 2407, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, D.C. 20593 (202) 426-1455.

SUPPLEMENTARY INFORMATION:

The Coast Guard published a Notice of Proposed Rulemaking (NPRM) on October 19, 1978 at 43 FR 48982, and a Supplemental NPRM on December 3, 1979, at 44 FR 69305 regarding these amendments. The public was given until January 17, 1980, to submit comments regarding the Supplemental NPRM. The Coast Guard received one comment which concurred with the language of the proposed rule and suggested that no changes be made. However, this docket is a companion to CGD 76-170, which addresses the casualty reporting requirements for all vessels. CGD 76-170 established a monetary damage criterion of \$25,000.00, an amount which has been adopted in this final rule in order to ensure that a consistent monetary damage criterion is established for all vessel casualties.

This final rule has been reviewed under the Department of

Transportation's "Regulatory Policies and Procedures" (44 FR 11034, February 26, 1979) and has been determined to be nonsignificant.

Drafting information: The principal persons involved in drafting this final rule are CDR H. T. Blomquist, Project Manager, Office of Merchant Marine Safety, and LCDR Jack Orchard, Project Counsel, Office of the Chief Counsel.

In consideration of the foregoing, Part 150 of Title 33, Code of Federal Regulations is amended to read as follows:

1. By amending § 150.711 by revising subparagraph (a)(1) and by adding subparagraph (a)(6) to read as follows:

§ 150.711 Casualty or accident.

(a) * * *

(1) Any component of the deepwater port is hit by a vessel and damage to property is in excess of \$25,000.00 This amount is to reflect the cost necessary to restore the property to the service condition which existed prior to the casualty, including the cost of salvage, gas freeing, and dry dock. It does not include such items as demurrage.

(6) Loss of life or injury causing any person to be incapacitated for a period in excess of 72 hours as a result of diving using underwater breathing apparatus.

(Secs. 10(a), 10(b), Pub. L. 93-627, 88 Stat. 2137-38 (33 U.S.C. 1509 (a) and (b)); 49 CFR 1.46(s))

Dated: November 17, 1980.

J. B. Hayes,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 80-36582 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[WH-FRL 1679-7]

Ocean Dumping; Final Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates a fish cannery waste site in the Pacific Ocean as an EPA approved interim ocean dumping site. This action is necessary to provide a site for the dumping of fish cannery wastes originating in American Samoa which can no longer be accommodated on land. This action will permit the dumping of these wastes on

an interim basis until an Environmental Impact Statement can be prepared on this site.

DATE: This site designation shall become effective on November 24, 1980.

FOR FURTHER INFORMATION CONTACT:

Mr. T. A. Wastler, Chief, Marine Protection Branch (WH-548), EPA, Washington, DC 20460. 202/472-2836.

SUPPLEMENTARY INFORMATION: Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq., (hereafter "the Act") gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On September 19, 1980, the Administrator delegated the authority to designate ocean dumping sites to the Assistant Administrator for Water and Waste Management. This final interim site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in this Part 228. EPA designated "Approved Interim and Final Ocean Dumping Sites" on January 11, 1977 (42 FR 2461 et seq.) and extended the designations on January 16, 1980 (45 FR 3053 et seq.).

On August 25, 1980, EPA proposed designation of an additional approved interim ocean dumping site. (45 FR 56374.) The proposed new site is in the Pacific Ocean and would be used solely for the dumping of fish cannery wastes originating in American Samoa. The public comment period expired on October 24, 1980.

The proposed rulemaking contained detailed information regarding the need for an ocean dumping site for the disposal of these fish cannery wastes, the properties of the wastes, and an evaluation of the factors to be considered in site selection in relation to this particular site.

Three comments were received in response to the notice of proposed rulemaking. The comments and responses follow.

Comment: One commenter felt that the restriction of use of the dumpsite for fish cannery waste was too general and would allow the disposal of a wide variety of materials at the proposed site. He suggested that the proposed rule be amended to limit the dumping exclusively to the pollutants discussed and that the rule specifically mention that future use of the site after the rule has expired be contingent upon the filing of an acceptable Environmental Impact Statement (EIS) and public notice in the Federal Register.

Response: Designation of a dumping site is only part of the total action required for approval of an ocean dumping operation. Site designations are made in terms of the generic type of wastes for which the site is to be used (e.g., industrial wastes, sewage sludge, dredged material, containerized wastes). The ocean dumping permit itself, which is the actual authorization for dumping in any particular case, specifies not only the processes from which the waste is generated but also the detailed physical and chemical characteristics of the wastes which may be dumped. Proposed actions on permit applications are also subject to public comment and opportunity for public hearing, and it is in the action on permit applications that specific requirements are placed on the applicant as to the volume and type of waste that may be dumped.

As noted by the comment, the interim site designation exists only for a specific period of time, and dumping at this site will be allowed only during the stated time. The site may not be used after this interim period unless an EIS is prepared and the site is designated as a finally approved site through further formal rulemaking.

Comment: The National Marine Fisheries Service commented that recent research has shown that it is feasible to use this type of organic waste for methane gas production and suggested that the government of American Samoa might care to explore this approach in this particular case. If practical in this situation, this process could result in generation of energy combined with a decrease in the volume of waste disposed of at sea.

Response: EPA agrees fully that wherever possible wastes should be used for beneficial purposes, and the ocean dumping regulations require that land-based methods of disposal, including recycling and reuse, be considered in determining whether or not an ocean dumping permit should be issued. This suggestion by the National Marine Fisheries Service has been referred to the permit applicants and the government of American Samoa, and EPA Region IX will work with them to determine the feasibility of this technique for the situation in American Samoa.

Comment: EPA Region IX pointed out the difficulties involved in conducting the necessary environmental studies at a location so far removed from adequate scientific support facilities. The logistical requirements in regard to deploying a suitable vessel at American

Samoa and having laboratory analyses done in Hawaii or California will significantly lengthen the time necessary to complete the field surveys necessary before an EIS can be begun. Region IX requested that the interim designation be extended to 36 months rather than 24 months so as to allow time to complete the field work and EIS in a thorough manner.

Response: In view of the difficulties pointed out by EPA Region IX, the interim designation is made for 36 months. This is regarded as an adequate length of time for completion of the necessary studies and preparation of an EIS, and no extension of the interim designation beyond this time is contemplated.

Management authority for this site will be delegated to the Regional Administrator of EPA Region IX.

Although this site designation may have substantial local impacts in the vicinity of the dump site and to those who use it, we have determined that this proposed rule is not a "significant" regulatory action within the meaning of Executive Order 12044, Improving Government Regulations (March 23, 1978).

(33 U.S.C. 1412 and 1418)

Dated: November 18, 1980.

Eckardt C. Beck,

Assistant Administrator for Water and Waste Management.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended by adding to § 228.12(a) an ocean dumping site for Region IX as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

(a) * * *

Approved interim dumping sites.

* * * * *

Fish Cannery Wastes Site—Region IX.
Location: Latitude—14d22'S;
Longitude—170d41'W (center point).
Size: 1 nautical mile in diameter.
Depth: 1,200 meters (4,000 feet).
Primary Use: Fish cannery wastes.
Period of Use: Site will expire (36 months after date of publication).
Restriction: Disposal shall be limited to not more than 130,000 tons per year of fish cannery wastes generated on the island of Tutuila, American Samoa.

[FR Doc. 80-36567 Filed 11-21-80; 8:45 am]

BILLING CODE 6560-29-M

40 CFR Part 261

[SWH-FRL 1674-5]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Reopening of Comment Period and Availability of Additional Information

AGENCY: Environmental Protection Agency.

ACTION: Reopening of comment period on proposed and interim final hazardous waste listings and notice of availability of additional information.

SUMMARY: The Environmental Protection Agency (EPA) today is reopening for sixty (60) days the deadline for comment on EPA's May 19, 1980, proposed and interim final hazardous waste listings under Section 3001 of the Resource Conservation and Recovery Act (RCRA), as amended, of two wastes generated by the wood preserving industry. EPA is taking this action to make available to the public additional information and data on the hazardousness of these particular wastes which information became available to EPA after the close of the comment period. This information is now contained in a revised listing background document, which also is being made available for public comment.

Grant of this extension period does not delay the effectiveness of the listing of bottom sediment sludges from the treatment of wastewaters from wood preserving processes using pentachlorophenol and creosote. This hazardous waste listing was promulgated in interim final form on May 19, 1980 and still becomes effective as an interim final regulation on November 19, 1980.

DATES: Comments on this additional information and on the revised listing background document are due no later than January 23, 1981.

ADDRESSES: Comments should be addressed to Deborah Villari, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Comments should identify the regulatory docket number, "wood preserving-§ 3001."

Copies of the background document described in this notice are available for reviewing at the EPA Public Information Reference Unit (Room 2404) and the RCRA Docket Room (Room 2711), both located at 401 M Street, SW., Washington, D.C. 20460, and at all EPA Regional Office libraries during the

hours of 9:00 a.m. to 4:30 p.m., Mondays through Fridays.

FOR FURTHER INFORMATION CONTACT: Matthew A. Straus, Hazardous and Industrial Waste Division, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 755-9187.

SUPPLEMENTARY INFORMATION: On May 19, 1980, as part of its initial regulations implementing Section 3001 of RCRA, EPA published an interim final list of hazardous wastes (Subpart D of this Part), and proposed to add eleven additional wastes to this list (45 FR 33123-33124, 33136-33137). Included in these proposed and interim final lists were two wastes from the wood preserving industry, namely "bottom sediment sludges from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol" (Hazardous Waste No. K001) and "wastewater from wood preserving processes that use creosote or pentachlorophenol" (proposed). The original deadline for commenting on these listings was July 18, 1980.

Since the close of the comment period, the Agency has identified additional information and data to further support the listing of these two wastes. The additional information includes several damage incidents involving these wastes, additional waste stream analytic data, more complete descriptions of typical wastewater treatment processes, and additional information as to the environmental fate of pentachlorophenol, a principal waste constituent. We also have documented more prominently data analyzing hazardous constituent concentrations in wood preserving process wastewaters. The Agency also has revised the listing background document for these wastes to incorporate this additional information and to respond to comments received to date. We are reopening the comment period for sixty (60) days to allow additional time to comment on these revisions and on the new data. We will not consider comments on any other section of the Part 261 hazardous waste regulations.

In reopening the comment period, the Agency is not taking any action to either finalize or to temporarily exclude these wastes from the hazardous waste management regulatory control system. Therefore, on November 19, 1980, the bottom sediment sludges (Hazardous Waste Number K001), promulgated as an interim final listing on May 19, 1980, will be subject to the full complement of

Subtitle C regulations. Process wastewater, proposed for listing as a hazardous waste on May 19, will not be subject to Subtitle C regulation until the listing is finalized. Since we believe that the additional information and data further supports the conclusion that these wastes are hazardous, we believe it would be inappropriate to delay the effectiveness of the interim final regulation. At the same time, we believe it would be inappropriate to finalize these hazardous waste listings until the public has had an opportunity to comment on the additional information.

Dated: November 13, 1980.

Eckardt C. Beck,

Assistant Administrator.

[FR Doc. 80-36050 Filed 11-21-80; 8:45 am]

BILLING CODE 6560-30-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 101

[FPMR Temp. Reg. H-23]

Reporting Motor Vehicles for Disposal and Release of Vehicles After Sale; Temporary Regulation

AGENCY: General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This regulation requires Federal agencies to include odometer information on their reporting documents (Standard Form 120, Report of Excess Personal Property, or Standard Form 126, Report of Personal Property for Sale) when referring motor vehicles to the selling agency for disposal. The additional information will enable the selling agency personnel to make the necessary vehicle odometer certifications on revised Standard Form 97 (Rev. 7-79), the United States Government Certificate of Release of a Motor Vehicle, as required by section 408(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988(a)), as implemented in 49 CFR Part 580.

DATES: Effective date: November 24, 1980.

Expiration date: October 1, 1981.

Comments due on or before: April 1, 1981.

ADDRESS: Comments should be addressed to: General Services Administration (DPS), Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Milton L. Herman or Dona Gamble, Sales Management Branch (703-557-0681).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044. (Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)))

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter H to read as follows:

November 13, 1980.

[Federal Property Management Regs.;
Temporary Reg. H-23]

Reporting Motor Vehicles for Disposal and Release of Vehicles After Sale

1. *Purpose.* This regulation requires Federal agencies to submit odometer information to the selling agency when reporting vehicles for disposal.

2. *Effective date.* This regulation is effective upon publication in the *Federal Register*.

3. *Expiration date.* This regulation expires on October 1, 1981.

4. *Applicability.* The provisions of this regulation apply to those Federal agencies that report motor vehicles for disposal.

5. *Background.* 49 CFR Part 580, Odometer Disclosure Requirements, implements section 408(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988(a)). This regulation requires the transferor of a motor vehicle to make a written disclosure to the transferee concerning the accuracy of odometer mileage. To implement this requirement to cover the sale of Government motor vehicles, revised Standard Form 97 (Rev. 7-79), the United States Government Certificate of Release of a Motor Vehicle, and Standard Form 97-A, Agency Record Copy of the United States Government Certificate of Release of a Motor Vehicle, include the required odometer mileage statement. In order for the selling agency to make the required certification, agencies reporting vehicles for disposal must provide the additional information required by par. 6.

6. *Motor vehicle reporting requirements and release of vehicles after sale.* a. Reporting agencies must enter the following additional information on Standard Forms 120, Report of Excess Personal Property, and Standard Forms 126, Report of Personal Property for Sale, covering motor vehicles. Vehicles with odometers which require the same certification may be item numbered sequentially on the

reporting document and one certification (see (2), below) given covering the vehicles.

(1) The mileage shown on the vehicle

Mileage shown for item 1. ☐ Correct)
☐ Turned Over) Check One
 No(s). _____ is/are: 3. ☐ Incorrect)
 Odometer(s) has/have: 4. ☐ Not been altered)
 5. ☐ Been altered-correct) Check One
 6. ☐ Been altered-incorrect)

b. Delivery of motor vehicles to purchasers shall be evidenced by submitting to the purchaser a completed copy of Standard Form 97/97-A. This form contains the odometer certification required by section 408(a) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988(a)).

c. The agency reporting document containing the necessary certification is used by the selling agency as the basis for making the odometer certification on Standard Form 97/97-A. The completed Standard Form 97/97-A is forwarded to the custodian with the GSA Form 27, Notice of Award, authorizing the custodian to release the property. At the time of release the custodian will obtain the signature of the buyer or his/her authorized representative in the "Signature of Transferee (Buyer)" block at the bottom of the Standard Form 97, and distribute the form as follows:

(1) Provide the original to the purchaser at the time of release; and
 (2) Mail the two copies of the Standard Form 97-A to the appropriate selling agency with the signed release copy of GSA Form 27, Notice of Award. The selling agency shall then provide one of these copies to the owning agency.

d. If agencies should elect to sell their own motor vehicles using the small lot authority under FPMR 101-45.105-3, a supply of Standard Forms 97/97-A to cover these vehicles should be requested from the supporting GSA regional office.

e. Proper precautions must be taken by agency heads to prevent blank copies of Standard Form 97/97-A from being obtained by unauthorized persons.

7. *Agency comments.* Comments concerning the effect or impact of this regulation on agency operations or programs should be submitted to the General Services Administration (DPS), Washington, DC 20405, no later than April 1, 1981.

odometer; and

(2) A certification as follows (see attachment A for a complete explanation of each block):

8. *Effect on other directives.* This regulation supplements the policies in FPMR 101-45.303.

Note.—The form as illustrated in Attachment A is filed with the original document and does not appear in this volume.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 80-30648 Filed 11-21-80; 8:45 am]

BILLING CODE 6820-96-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3300

[Circular No. 2481]

Amendment to the Regulations on Grants of Pipeline Rights-of-Way on the Outer Continental Shelf

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking makes technical changes in the regulations on Grants of Pipeline Rights-of-Way on the Outer Continental Shelf. The amendments will clear up a procedural conflict between the Bureau of Land Management and the U.S. Geological Survey as to which agency handles the issuance of grants for those pipelines owned by the lessee or lessee's operator which are located within the boundaries of a single lease, the boundaries of a unitized lease or the boundaries of contiguous leases of the same lessee or lessee's operator.

EFFECTIVE DATE: November 24, 1980.

ADDRESS: Any inquiries or suggestions should be sent to: Director (540), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Herbert Kaufman (202) 343-6906.

SUPPLEMENTARY INFORMATION: After the issuance of the final rulemaking on Grants of Pipeline Rights-of-Way on the Outer Continental Shelf, questions arose about the extent of the authority of the U.S. Geological Survey for the issuance of permits for pipelines owned by a lessee or lessee's operator which are located on the Outer Continental Shelf. These questions arose because of conflicts between the Bureau of Land Management and the U.S. Geological Survey as to their respective authority to authorize rights-of-way for pipelines located on the Outer Continental Shelf. These questions were resolved with the signing of a memorandum of understanding between the two agencies that delineated the authority of each of the agencies with regard to the authorizations for rights-of-way for pipelines located on the Outer Continental Shelf, with the U.S. Geological Survey's responsibility limited to permits for pipelines located within the boundaries of a single lease, the boundaries of a unitized lease and the boundaries of contiguous leases of the same lessee or lessee's operator and the Bureau of Land Management having the responsibility for the issuing of right-of-way grants for pipelines not wholly contained within the boundaries of a single lease, the boundaries of a unitized lease or the boundaries of contiguous leases of the same lessee or lessee's operator.

These technical changes do not impose any additional burden on lessees or applicants for a right-of-way grant on the Outer Continental Shelf. The rulemaking only further defines the extent of the responsibility of the Bureau of Land Management and U.S. Geological Survey and has no significant impact on the public.

The principal author of this final rulemaking is Herbert Kaufman of the Division of Offshore Resources, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is determined that publication of this final rulemaking is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

The Department of the Interior has determined that this document is not a significant regulatory action requiring

the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.), Subpart 3340, Part 3300, Group 3300, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

Guy R. Martin,

Assistant Secretary of the Interior.

November 18, 1980.

§ 3340.0-2 [Amended]

1. Section 3340.0-2 is amended by the deletion of the second paragraph.

2. Subpart 3340 is amended by the addition of a new section 3340.0-4 as follows:

§ 3340.0-4 Responsibilities.

(a) The Bureau of Land Management is responsible for making right-of-way grants for pipelines on the Outer Continental Shelf that are not wholly contained within the boundaries of a single lease, the boundaries of unitized leases or the boundaries of contiguous, not cornering, leases of the same leasee or lessee's operator.

(b) The U.S. Geological Survey is responsible for issuing permits in accordance with the provisions of 30 CFR 250.20 for pipelines on the Outer Continental Shelf which are wholly contained within the boundaries of a single lease, the boundaries of unitized leases or the boundaries of contiguous, not cornering, leases of the same leasee or lessee's operator.

3. Section 3340.2-1(e)(1) is amended to read as follows:

§ 3340.2-1 Applications.

* * * * *

(e)(1) An applicant shall show the extent to which the right-of-way applied for invades or crosses mineral leases and rights-of-way granted by the Bureau of Land Management or pipelines permitted by the U.S. Geological Survey, other than mineral leases, rights-of-way or pipelines of the applicant. The application shall contain a statement that a copy of the application has been delivered personally or by registered or certified mail to each lessee, right-of-way or pipeline permit holder whose lease, right-of-way or pipeline permit is so affected. * * *

[FR Doc. 80-36496 Filed 11-21-80; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Part 3610

[Circular No. 2479]

Mineral Materials Sales, Noncompetitive (Negotiated) Sales; Dollar Limitations

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency final rulemaking.

SUMMARY: This emergency final rulemaking will remove the dollar limitations on negotiated sales of mineral materials that will be used on the Trans-Alaska Pipeline System and Alaska Natural Gas Transportation System in Alaska. There is an urgent need for additional fossil fuel supplies to the United States. The intended effect of this rulemaking is to expedite the construction and operation of two fossil fuel transportation systems in Alaska to meet this need.

EFFECTIVE DATE: November 24, 1980.

ADDRESS: Any suggestions or inquiries should be sent to: Director (140), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Larry Montross (202) 343-6226.

SUPPLEMENTARY INFORMATION: The principal author of this regulation is Larry Montross of the Office of Special Projects, Bureau of Land Management, Washington, D.C., assisted by the staff of the Office of Legislation and Regulatory Management.

This emergency final rulemaking will remove the dollar limitations on negotiated sales of mineral materials that will be used on the Alaska Natural Gas Transportation System (ANGTS) in Alaska and the Trans-Alaska Pipeline System (TAPS).

Present regulations require competition, but competitive sales take longer to process than negotiated sales and experience with TAPS has shown that, for all practical purposes, competition does not exist.

The Alaska Natural Gas Transportation Act of 1976 declares that the expeditious construction of a natural gas pipeline is in the national interest and the Act of July 31, 1947 provides that the Secretary may authorize negotiated sales of materials if it is impracticable to obtain competition. It is desirable that mineral materials for the two transportation systems be acquired by negotiated sales. In addition, the elimination of the dollar requirements for these negotiated sales is considered appropriate for the following reasons:

(1) The efficiency of pipeline construction can be increased because the elimination of dollar limits would

allow purchase of larger quantities through fewer sales.

(2) The quantities of gravel required will involve dollar amounts that are far in excess of the one-year, \$10,000 limitation currently required in the regulations.

Even though TAPS became operational in 1977 it is included in this regulation because there is a continuing annual need of approximately two million cubic yards of gravel for routine maintenance and the construction of new facilities such as pump plants.

The right-of-way grant for ANGTS is presently under review by Congress and anticipated to be completed by November. Shortly thereafter, the grant is expected to be issued. Thus, the need for gravel appears imminent and is the reason for the emergency nature of these regulations.

It is hereby determined that the publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of the Act of July 31, 1947, as amended, (43 U.S.C. 602) Subpart 3611, Part 3610, Group 3600, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

Guy R. Martin,

Assistant Secretary of the Interior.

November 17, 1980.

1. Subpart 3611 is amended by adding a new section 3611.4 to read as follows:

Subpart 3611—Noncompetitive (Negotiated) Sales

* * * * *

§ 3611.4 Exceptions.

The dollar limitations in § 3611.1 and § 3611.3 shall not apply to sales in the State of Alaska of mineral materials which the authorized officer determines are needed for construction, operation, maintenance or termination of the Trans-Alaska Pipeline System or the Alaska Natural Gas Transportation System.

[FR Doc. 80-36561 Filed 11-21-80; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF HEALTH AND HUMAN SERVICE

Office Of the Secretary

45 CFR Part 76

Debarment and Suspension From Eligibility for Financial Assistance; Correction

AGENCY: Department of Health and Human Services.

ACTION: Final rule; correction.

SUMMARY: On October 9, 1980 final regulations governing the debarment and suspension of individuals and institutions from eligibility for financial assistance were published in the *Federal Register* (45 FR 67262), effective November 10, 1980. This notice corrects several errors which appeared in that document.

FOR FURTHER INFORMATION CONTACT: William G. Ketterer, Senior Attorney, NIH, Office of the General Counsel, Room 2B50, Bldg. 31, National Institutes of Health, Bethesda, Maryland 20205. Telephone: (301) 496-6043.

Accordingly, the following corrections are made in FR Doc. 80-26916, appearing on pages 67262 through 67269 in the *Federal Register* dated October 9, 1980:

1. On page 67262:

(a) Second column, paragraph (2), in the heading the first letters of the words "Regulations" and "Necessary" are changed to the lower case (as corrected the heading reads "Are the regulations necessary?");

(b) Second column, paragraph (2), fourth line from the bottom, insert the word "this" between the words "take account" (as corrected, the line reads "regulations should take this into account");

(c) Third column, paragraph (4), eleventh line, insert the word "of" between the words "specifications the". (as corrected, the line reads: "conditions or specifications of the prior awards").

2. On page 67264, paragraph (11), second column, thirty-fourth line, in the second full paragraph the citation "§ 17.24(c)" is changed to read "§ 76.24(c)."

3. On page 67265, § 76.1(b), third column, the twelfth line is corrected by inserting a comma after the word "facts" and by adding the word "to" immediately following "and". As corrected, the line reads "existence or absence of facts, and to the".

4. On page 67267 § 76.14(a)(3), first column, seventh line, the word "know" is changed to "known".

5. Page 67268:

(a) Section 76.20, first column, first line, the number "(1)" is deleted;

(b) Section 76.23(a), third column, eighth line from the bottom, change the word "and" to "an". As corrected the line reads as follows: "interest by the Secretary, an exception".

Dated: November 18, 1980.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 80-36615 Filed 11-21-80; 8:45 am]

BILLING CODE 4110-12-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 4, 26, 35, 78, 97, 109, 167, 185, and 196

[CGD 76-170]

Casualty Reporting Requirements

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: This rule amends the casualty reporting requirements for vessels, and includes the following major changes: The physical damage monetary criterion has been increased to \$25,000; some intentional groundings need not be reported; losses of main propulsion of primary steering systems or components are a separate reporting criterion; and occurrences which materially adversely affect a vessel's fitness for service or route must be reported. These amendments are necessary in order to provide more comprehensive and useful reporting criteria as the initial step in a marine investigation.

DATES: This rule is effective on January 1, 1981.

Comments: Comments regarding the changes made to §§ 4.03-1(b) and 4.05-1(e) must be received on or before January 15, 1981.

ADDRESS: Comments should be submitted to: Commandant (G-CMC/24), Room 2418, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: CDR H. T. Blomquist, Office of Merchant Marine Safety (G-MMI/24), Room 2407, U.S. Coast Guard Headquarters, 2100 Second St., S.W., Washington, D.C. 20593 (202) 426-1455.

SUPPLEMENTARY INFORMATION: The Coast Guard published a Notice of Proposed Rulemaking (NPRM) on October 19, 1978, at 43 FR 48982, and a Supplemental NPRM on December 3, 1979, at 44 FR 69308, regarding these amendments. Twenty-five comments which were received in response to the NPRM were discussed in the

Supplemental NPRM. An additional 21 comments were submitted in response to the Supplemental NPRM and are discussed in this document. Two requests for a public hearing and five requests for "consultations" were received from members of the inland towing industry. These requests addressed paragraph 4.05-1(a) which requires the reporting of all accidental groundings. Because the written comments succinctly state the views of the commenters, the Coast Guard does not believe that a public hearing would provide additional beneficial information. Therefore, no public hearing has been scheduled.

DRAFTING INFORMATION: The principal persons involved in drafting this rule are CDR H. T. Blomquist, Project Manager, Office of Merchant Marine Safety, and LCDR Jack Orchard, Project Attorney, Office of the Chief Counsel.

Discussion of the Major Comments—Monetary Damage Criterion

Although the proposed monetary damage criterion was increased by the Supplemental NPRM from \$5,000 to \$10,000, many commenters suggested that because this figure is to include all of the costs necessary to restore the property to its pre-casualty condition (i.e., labor, material, salvage, gas freeing, and drydock), the amount should be increased so that the reporting of relatively minor damage may be avoided. The Coast Guard has reevaluated its proposed monetary damage criterion and, after taking into consideration the requirement that all incurred costs must be included, has increased the dollar amount to \$25,000 in this final rule.

In related comments it was suggested that the monetary damage criterion should not include the cost of gas freeing because this cost varies greatly, depending upon the type of cargo which is carried. As an example, a commenter pointed out that physical damage to a vessel's tank might not be reportable if the tank contained a material such as water, but would be reportable if it contained benzene, because the high costs of gas freeing would cause the dollar amount to exceed the monetary criterion. The commenter's point is well taken. However, the Coast Guard's selection of a monetary value as a reporting criterion is based upon the premise that increased repair costs are indicative of the increased seriousness of a marine casualty. Gas freeing costs, as they relate to the commenter's example, are indicative of the increased seriousness of a casualty which results in damage to a benzene tank as

compared to a casualty which involves damage to a water tank. While damage to a water tank might not be of a sufficient magnitude to require a marine investigation, a similar degree of damage to a tank containing a hazardous cargo would probably warrant an investigation. The monetary damage criterion has been chosen as the most effective method of ensuring that only the more serious casualties are reported.

Accidental Grounding Criterion

Nine of the commenters, the majority of whom were members of the inland towing industry, addressed the accidental grounding criterion. The thrust of their argument is that because of the presence of shifting sandbars in inland rivers, accidental groundings which do not result in damage are common occurrences which should not be reported. The Coast Guard understands that under some circumstances an accidental grounding may not result in serious damage. Nonetheless, the extent of damage is frequently not easily determined until a vessel is inspected by divers or is placed in drydock. To be of any value, a marine casualty investigation must commence as close in time to the accident as possible. If the Coast Guard is not made aware of damage until a vessel is placed in drydock, information surrounding the actual grounding may be partially or completely unobtainable. In addition to the difficulty in recognizing the extent of damage, the information on accidental groundings provides valuable data on potential or actual waterway hazards. As was mentioned in the Supplemental NPRM, the purpose of requiring notification of all accidental groundings is to provide marine safety information so that the Coast Guard may take corrective or preventive action, as is necessary. Even though this requirement may result in the reporting of a grounding which results in no damage, the information will be useful in identifying channel deficiencies or unsafe operating practices.

It must be emphasized that intentional damage-free groundings need only be reported if another reporting criterion is applicable. This exception was included in the regulation specifically to eliminate the reporting of groundings which are done intentionally by towing vessels while they are working with their tows.

Loss of Steerage or Propulsion

Four commenters addressed the criterion regarding the failure of a steering or propulsion component or control system. They question whether the Coast Guard intends to apply this

criterion if the losses are only momentary or if standby backup equipment takes over immediately for damaged equipment. Paragraph (b) of § 4.05-1 contains the phrase "the loss of which causes a reduction of the maneuvering capabilities of the vessel." This means that if a standby steering or propulsion system is immediately placed "on the line" so that there is no reduction in the vessel's maneuvering capabilities, then no reportable marine casualty has occurred. However, if a vessel's maneuvering capabilities are reduced, even if only for a short period of time, a reportable casualty has occurred.

Notification

Six commenters questioned the necessity of giving notice "by the most rapid means," rather than "as soon as possible." The "most rapid means" language was inserted in the supplemental NPRM to ensure that casualty information was made available in sufficient time to allow the Coast Guard's Search and Rescue (SAR) units and pollution strike forces to provide immediate assistance. Two of the commenters pointed out that the Coast Guard's interim rule located in Part 161 of Title 33, Code of Federal Regulations (CFR), contains a requirement to immediately notify the Coast Guard of the existence of a "hazardous condition" on a vessel. Because this notification requirement provides information which allows Coast Guard SAR and pollution response units to carry out their duties, immediate notification under Part 4 of Title 46, CFR, is unnecessary. Therefore, the "by most rapid means" language has been dropped and the existing "as soon as possible" language has been retained.

Hospitalization

The NPRM contained a proposal which would have directed the submission of a report whenever an injured person required hospitalization for more than 24 hours. This provision was deleted from the Supplemental NPRM in response to comment which stated that in order to avoid charges of negligence and to allow sufficient time for observation, many hospitals routinely hospitalize injured patients for 24 to 48 hours. The Coast Guard reevaluated its proposal and determined that the reporting of injuries serious enough to incapacitate a person for 72 hours would provide sufficient information to allow it to adequately investigate the cause of the injury and to determine if corrective action should be taken. Three commenters disagreed with this determination and were of the

opinion that the 24-hour hospitalization proposal should be made final in this rule. While a 24-hour hospitalization reporting criterion would probably result in an increase in the volume of reports submitted to the Coast Guard, it is doubtful that this increased volume would provide any additional significant information to the marine casualty investigator. The Coast Guard continues to believe that the 72-hour incapacitation and the loss of life reporting criteria will provide adequate information for it to carry out its personnel safety responsibilities. Therefore, no hospitalization criterion is included in this final rule.

Administrative Changes

Major Marine Casualty

Both the National Transportation Safety Board (NTSB) and the Coast Guard investigate marine casualties. The term "Major Marine Casualty" has been used in both the "joint regulations of the NTSB and the Coast Guard" in Subpart 4.40, and in the Coast Guard regulations in Subparts 4.03, 4.07, and 4.09. However, the term is defined differently in each subpart. In order to avoid confusion to persons who are concerned with marine casualties in general, the term "major marine casualty" has been deleted from Subparts 4.03, 4.07, and 4.09.

A printing error has been discovered in the designation of § 4.01-3. The designation is corrected in this final rule to read "§ 4.01-3" instead of "§ 4.02-3".

A reporting exclusion has been added to § 4.01-3 for vessels which provide notice in accordance with the provisions of 46 CFR 197.484 regarding commercial diving accidents.

In § 4.05-5, regarding the substance of a marine casualty notice, the term "probably occasion" has been used. Because this term has been interpreted to mean either "probable cause" or "circumstances", and thus has led to confusion in the past, it has been replaced by the term "circumstances." This change has also been made in each subchapter which contains a "substance of marine casualty notice" section.

Additional Amendments

The language in § 4.03-1(b) which expands upon the definition of a "marine casualty," refers to "injury or loss of life to any of its crew or passengers." The statutes which provide the authority for these regulations refer to "loss of life" and "injuries to persons," and do not limit their applicability to crews members and passengers. Although the majority of casualties which result in loss of life or

injury will involve passengers or crew members, some casualties occur which involve other classes of persons. For example, if a vessel strikes and kills or injures a swimmer (who is not a crew member or a passenger), with no other damage, the event would not be required to be reported under the previous definition contained in § 4.03-1(b). This oversight has been eliminated in this final rule by the substitution of a requirement that the loss of life or injury to "any person" must be reported.

Likewise, the language of § 4.05-1(e) provided an exemption from the reporting requirement for non-fatal injuries to harbor workers as long as the injury did not involve a "vessel casualty" or a "vessel equipment casualty." This exemption resulted in an unnecessary exclusion of person who performed a major portion of their work onboard vessels, and thus were exposed to a significant risk of being injured in shipboard accidents. To correct this situation the exemption has been eliminated and all injuries to all persons which incapacitate them for greater than 72 hours, are reportable.

Because these two amendments to §§ 4.03-1(b) and 4.05-1(e) were not addressed in the NPRM nor in the supplemental NPRM, comments regarding them will be accepted for 45 days. Any changes which the Coast Guard makes in response to comments will be addressed in a document to be published in the *Federal Register* within 120 days of the effective date of this rule. This final rule has been reviewed under the Department of Transportation's "Policies and Procedures for Simplification, Analysis, and Review of Regulations" (DOT Order 2100.5). A final evaluation has been prepared and is included in the public docket.

In compliance with the Federal Reports Act of 1946, forms CG-924E and CG-2692 have previously been submitted to and sanctioned by the Office of Management and Budget (OMB), until May, 1985. This interim final rule affects the occasions when a report must be submitted. For this reason, OMB approval of this action has been sought concurrently with the publication of this document. If OMB approval is not received by January 1, 1981, a notice will be published in the *Federal Register*.

In consideration of the foregoing, Title 46, Code of Federal Regulations is amended as follows:

PART 4—MARINE INVESTIGATION REGULATIONS

§ 4.02-3 Redesignated as § 4.01-3 and Amended

1. By redesignating § 4.02-3 as § 4.01-3, and amending it to read as follows:

§ 4.01-3 Reporting exclusion.

(a) Vessels subject to 33 CFR 173.51 are excluded from the requirements of Subpart 4.05.

(b) Vessels which report diving accidents under 46 CFR 197.484 regarding deaths, or injuries which cause incapacitation for greater than 72 hours, are not required to give notice under §§ 4.05-5(d) or 4.05-5(e).

2. By amending § 4.03-1(b) and adding a new § 4.03-1(c) to read as follows:

§ 4.03-1 Marine Casualty or accident.

(b) The term "marine casualty or accident" includes any accidental grounding, or any occurrence involving a vessel which results in damage by or to the vessel, its apparel, gear, or cargo, or injury or loss of life of any person; and includes among other things, collisions, strandings, groundings, foundering, heavy weather damage, fires, explosions, failure of gear and equipment and any other damage which might affect or impair the seaworthiness of the vessel.

(c) The term "marine casualty or accident" also includes occurrences of loss of life or injury to any person while diving from a vessel and using underwater breathing apparatus.

§ 4.03-5 [Reserved]

3. By revoking and reserving § 4.03-5.

4. By revising § 4.05-1 to read as follows:

§ 4.05-1 Notice of marine casualty.

The owner, agent, master or person in charge of a vessel involved in a marine casualty shall give notice as soon as possible to the nearest Coast Guard Marine Safety or Marine Inspection Office whenever the casualty involves any of the following:

(a) All accidental groundings and any intentional grounding which also meets any of the other reporting criteria or creates a hazard to navigation, the environment, or the safety of the vessel;

(b) Loss of main propulsion or primary steering, or any associated component or control system, the loss of which causes a reduction of the maneuvering capabilities of the vessel. Loss means that systems, component parts, subsystems, or control systems do not perform the specified or required function;

(c) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service or route, including but not limited to fire, flooding, or failure or damage to fixed fire extinguishing systems, lifesaving equipment, auxiliary power generating equipment, or bilge pumping systems;

(d) Loss of life;

(e) Injury causing a person to remain incapacitated for a period in excess of 72 hours;

(f) An occurrence not meeting any of the above criteria but resulting in damage to property in excess of \$25,000.00. Damage includes the cost necessary to restore the property to the service condition which existed prior to the casualty, including the cost of salvage, gas freeing, and drydock. It does not include such items as demurrage.

5. By revising § 4.05-5 to read as follows:

§ 4.05-5 Substance of marine casualty notice.

The notice required in § 4.05-1 must include the name and official number of the vessel involved, the name of the vessel's owner or agent, the nature and circumstances of the casualty, the locality in which it occurred, the nature and extent of injury to persons, and the damage to property.

6. By adding a new § 4.05-30 to read as follows:

§ 4.05-30 Incidents involving hazardous materials.

When a casualty occurs involving hazardous materials, notification and a written report to the Department of Transportation may be required. See 49 CFR 171.15 and 171.16.

§ 4.07-50 [Reserved]

7. By revoking and reserving § 4.07-50.

8. By revising § 4.09-1 to read as follows:

§ 4.09-1 Commandant to designate.

If it appears that it would tend to promote safety of life and property at sea or would be in the public interest, the Commandant may designate a Marine Board of Investigation to conduct an investigation.

PART 26—OPERATIONS

9. By amending Part 26 by adding a new Subpart 26.08 to read as follows:

Subpart 26.08—Notice of Marine Casualty and Voyage Records

Sec.

26.08-1 Notice of marine casualty.

26.08-3 Reporting exclusion.

26.08-5 Substance of marine casualty notice.

- Sec.
26.08-10 Report by officer in charge of vessel in person.
26.08-15 Voyage records, retention of.
26.08-20 Report of accident to aid to navigation.
26.08-25 Report when state of war exists.

Authority: Sec. 10, 18 Stat 128 (33 U.S.C. 361); R.S. 4450, as amended (46 U.S.C. 239); R.S. 4405 (46 U.S.C. 375); 80 Stat 938 (49 U.S.C. 1655(b)(1); 49 CFR 1.46(b).

Subpart 26.08—Notice of Marine Casualty and Voyage Records

§ 26.08-1 Notice of marine casualty.

The owner, agent, master or person in charge of a vessel involved in a marine casualty shall give notice as soon as possible to the nearest Coast Guard Marine Safety or Marine Inspection Office whenever the casualty involves any of the following:

(a) All accidental groundings and any intentional grounding which also meets any of the other reporting criteria or creates a hazard to navigation, the environment, or the safety of the vessel;

(b) Loss of main propulsion or primary steering, or any associated component or control system, the loss of which causes a reduction of the maneuvering capabilities of the vessel. Loss means that systems, component parts, subsystems, or control systems do not perform the specified or required function;

(c) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service or route including but not limited to fire, flooding, or failure or damage to fixed fire extinguishing systems, lifesaving equipment, auxiliary power generating equipment, or bilge pumping systems;

(d) Loss of life;

(e) Injury causing a person to remain incapacitated for a period in excess of 72 hours;

(f) An occurrence not meeting any of the above criteria but resulting in damage to property in excess of \$25,000.00. Damage includes the cost necessary to restore the property to the service condition which existed prior to the casualty, including the cost of salvage, gas freeing, and dry dock. It does not include such items as demurrage.

§ 26.08-3 Reporting exclusion.

Vessels subject to 33 CFR 173.51 are excluded from the requirements of subpart 26.08.

§ 26.08-5 Substance of marine casualty notice.

The notice required in § 26.08-1 shall show the name and official number of the vessel involved, the name of the vessel's owner or agent, the nature and

circumstances of the casualty, the locality in which it occurred, the nature and extent of injury to persons, and the damage to property.

§ 26.08-10 Report by officer in charge of vessel in person.

(a) In addition to the notice required by § 26.08-1, the person in charge of the vessel shall, as soon as possible, report in writing and in person to the Officer in Charge, Marine Inspection, at the port in which the casualty occurred or nearest the port of first arrival; *Provided*, That when due to distance it may be inconvenient to report in person it may be done in writing only. The written report required for personnel accidents shall be made on Form CG 924E and submitted for each individual injured and each loss of life. For all other vessel casualties the written report shall be made on Form CG 2692.

(b) If filed without delay, the Form CG 924E or CG 2692 may also provide the notice required by § 26.08-1.

§ 26.08-15 Voyage records, retention of.

(a) The owner, agent, master, or person in charge of any vessel involved in a marine casualty shall retain such voyage records as are maintained by the vessel, such as both rough and smooth deck and engine room logs, bell books, navigation charts, navigation work books, compass deviation cards, gyro records, stowage plans, records of draft, aids to mariners, night order books, radiograms sent and received, radio logs, crew and passenger lists, articles of shipment, official logs and other material which might be of assistance in investigating and determining the cause of the casualty. The owner, agent, master, other officer or person responsible for the custody thereof, shall make these records available upon request, to a duly authorized investigating officer, administrative law judge, officer or employee of the Coast Guard.

§ 26.08-20 Report of accident to aid to navigation.

Whenever a vessel collides with a lightship, buoy, or other aid to navigation under the jurisdiction of the Coast Guard, or is connected with any such collision, it shall be the duty of the person in charge of such vessel to report the accident to the nearest Officer in Charge, Marine Inspection. No report on Form CG 2692 is required unless one or more of the results listed in § 26.08-1 occur.

§ 26.08-25 Reports when state of war exists.

During the period when a state of war exists between the United States and

any foreign nation, communications in regard to casualties or accidents will be handled with caution and the reports shall not be made by radio or by telegram.

PART 35—OPERATIONS

10. By revising § 35.15-1 (a) and (b) to read as follows:

§ 35.15-1 Notice of casualty and voyage records—TB/ALL.

(a) The owner, agent, master or person in charge of a vessel involved in a marine casualty shall give notice as soon as possible to the nearest Coast Guard Marine Safety or Marine Inspection Office whenever the casualty involves any of the following:

(1) All accidental groundings and any intentional grounding which also meets any of the other reporting criteria or creates a hazard to navigation, the environment, or the safety of the vessel;

(2) Loss of main propulsion or primary steering, or any associated component or control system, the loss of which causes a reduction of the maneuvering capabilities of the vessel. Loss means that systems, component parts, subsystems, or control systems do not perform the specified or required function;

(3) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service or route including but not limited to fire, flooding, or failure or damage to fixed fire extinguishing systems, lifesaving equipment, auxiliary power generating equipment or bilge pumping systems;

(4) Loss of life;

(5) Injury causing a person to remain incapacitated for a period in excess of 72 hours;

(6) An occurrence not meeting any of the above criteria but resulting in damage to property in excess of \$25,000.00. Damage includes the cost necessary to restore the property to the service condition which existed prior to the casualty, including the cost of salvage, gas freeing, and dry dock. It does not include such items as demurrage.

(b) The notice required by paragraph (a) of this section must include the name and official number of the vessel involved, the name of the vessel's owner or agent, the nature and circumstances of the casualty, the locality in which it occurred, the nature and extent of injury to persons, and the damage to property.

(c) * * *

* * * * *

PART 78—OPERATIONS

11. By revising § 78.07-1(a) to read as follows:

§ 78.07-1 Notice of casualty.

(a) The owner, agent, master or person in charge of a vessel involved in a marine casualty shall give notice as soon as possible to the nearest Coast Guard Marine Safety or Marine Inspection Office whenever the casualty involves any of the following:

(1) All accidental groundings and any intentional grounding which also meets any of the other reporting criteria or creates a hazard to navigation, the environment, or the safety of the vessel;

(2) Loss of main propulsion or primary steering, or any associated component or control system, the loss of which causes a reduction of the maneuvering capabilities of the vessel. Loss means that systems, component parts, sub-systems, or control systems do not perform the specified or required function;

(3) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service or route, including but not limited to fire, flooding, or failure or damage to fixed fire extinguishing systems, lifesaving equipment, auxiliary power generating equipment, or bilge pumping systems;

(4) Loss of life;

(5) Injury causing a person to remain incapacitated for a period in excess of 72 hours;

(6) An occurrence not meeting any of the above criteria but resulting in damage to property in excess of \$25,000.00. Damage includes the cost necessary to restore the property to the service condition which existed prior to the casualty, including the cost of salvage, gas freeing and dry dock. It does not include such items as demurrage.

* * *

12. By revising § 78.07-5 to read as follows:

§ 78.07-5 Information required.

The notice required by § 78.07-1 must include the name and official number of the vessel involved, the name of the vessel's owner or agent, the nature and circumstances of the casualty, the locality in which it occurred, the nature and extent of injury to persons, and the damage to property.

PART 97—OPERATIONS

13. By revising § 97.07-1(a) to read as follows:

§ 97.07-1 Notice of casualty.

(a) The owner, agent, master or person in charge of a vessel involved in a marine casualty shall give notice as soon as possible to the nearest Coast Guard Marine Safety or Marine Inspection Office whenever the casualty involves any of the following:

(1) All accidental groundings and any intentional grounding which also meets any of the other reporting criteria or creates a hazard to navigation, the environment, or the safety of the vessel;

(2) Loss of main propulsion or primary steering, or any associated component or control system, the loss of which causes a reduction of the maneuvering capabilities of the vessel. Loss means that systems, component parts, sub-systems, or control systems do not perform the specified or required function;

(3) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service or route, including but not limited to fire, flooding, or failure or damage to fixed fire extinguishing systems, lifesaving equipment, auxiliary power generating equipment, or bilge pumping systems;

(4) Loss of life;

(5) Injury causing a person to remain incapacitated for a period in excess of 72 hours;

(6) An occurrence not meeting any of the above criteria but resulting in damage to property in excess of \$25,000.00. Damage includes the cost necessary to restore the property to the service condition which existed prior to the casualty, including the cost of salvage, gas freeing and dry dock. It does not include such items as demurrage.

* * *

14. By revising § 97.07-5 to read as follows:

§ 97.07-5 Information required.

The notice required by § 97.07-1 must include the name and official number of the vessel involved, the name of the vessel's owner or agent, the nature and circumstances of the casualty, the locality in which it occurred, the nature and extent of injury to persons, and the damage to property.

PART 109—OPERATIONS

15. By revising § 109.411 (a) and (b) to read as follows:

§ 109.411 Notice of casualty.

(a) The owner, agent, master or person in charge of a vessel involved in a marine casualty shall give notice as soon as possible to the nearest Coast Guard Marine Safety or Marine

Inspection Office whenever the casualty involves any of the following:

(1) All accidental groundings and any intentional grounding which also meets any of the other reporting criteria or creates a hazard to navigation, the environment, or the safety of the vessel;

(2) Loss of main propulsion or primary steering, or any associated component or control system, the loss of which causes a reduction of the maneuvering capabilities of the vessel. Loss means that systems, component parts, sub-systems, or control systems do not perform the specified or required function;

(3) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service or route, including but not limited to fire, flooding, or failure or damage to fixed fire extinguishing systems, lifesaving equipment, auxiliary power generating equipment, or bilge pumping systems;

(4) Loss of life;

(5) Injury causing a person to remain incapacitated for a period in excess of 72 hours;

(6) An occurrence not meeting any of the above criteria but resulting in damage to property in excess of \$25,000.00. Damage includes the cost necessary to restore the property to the service condition which existed prior to the casualty, including the cost of salvage, gas freeing, and dry dock. It does not include such items as demurrage.

(b) The notice required by this section must include the following:

(1) Name and official number of the unit.

(2) Name of the owner or agent of the unit.

(3) Description of the nature and circumstances of the casualty.

(4) Location of the unit at the time of the casualty.

(5) Nature and extent of injury to persons.

(6) Damage to property.

* * *

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

16. By revising § 167.65-65 (a) and (b) to read as follows:

§ 167.65-65 Notice of casualty and voyage records.

(a) The owner, agent, master or person in charge of a vessel involved in a marine casualty shall give notice as soon as possible to the nearest Coast Guard Marine Safety or Marine Inspection Office whenever the casualty involves any of the following:

(1) All accidental groundings and any intentional grounding which also meets

any of the other reporting criteria or creates a hazard to navigation, the environment, or the safety of the vessel;

(2) Loss of main propulsion or primary steering, or any associated component or control system, the loss of which causes a reduction of the maneuvering capabilities of the vessel. Loss means that systems, component parts, sub-systems, or control systems do not perform the specified or required function;

(3) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service or route, including but not limited to fire, flooding, or failure or damage to fixed fire extinguishing systems, lifesaving equipment, auxiliary power generating equipment, or bilge pumping systems;

(4) Loss of life;

(5) Injury causing a person to remain incapacitated for a period in excess of 72 hours;

(6) An occurrence not meeting any of the above criteria but resulting in damage to property in excess of \$25,000.00. Damage includes the cost necessary to restore the property to the service condition which existed prior to the casualty, including the cost of salvage, gas freeing, and dry dock. It does not include such items as demurrage.

(b) The notice required by this section must include the name and official number of the nautical school ship involved, the name of the ship's owner or agent, the nature and circumstances of the casualty, the locality in which it occurred, the nature and extent of injury to persons, and the damage to property.

(c) * * *

* * * * *

PART 185—OPERATIONS

17. By revising Subpart 185.15 to read as follows:

Subpart 185.15—Notice of Marine Casualty and Voyage Records

Sec.

185.15-1 Notice of casualty.

185.15-5 Substance of marine casualty notice.

185.15-10 Report by officer in charge of vessel in person.

185.15-15 Voyage records, retention of.

185.15-20 Report of accident to aid to navigation.

185.15-25 Reports when state of war exists.

Authority: Sec. 10, 18 Stat. 128 (33 U.S.C. 361); R.S. 4450, as amended (46 U.S.C. 239); R.S. 4405 (46 U.S.C. 375); 80 Stat. 938 (49 U.S.C. 1655(b)(1)); 49 CFR 1.46(b).

Subpart 185.15—Notice of Marine Casualty and Voyage Records

§ 185.15-1 Notice of casualty.

The owner, agent, master or person in charge of a vessel involved in a marine casualty shall give notice as soon as possible to the nearest Coast Guard Marine Safety or Marine Inspection Office whenever the casualty involves any of the following:

(a) All accidental groundings and any intentional grounding which also meets any of the other reporting criteria or creates a hazard to navigation, the environment, or the safety of the vessel;

(b) Loss of main propulsion or primary steering, or any associated component or control system, the loss of which causes a reduction of the maneuvering capabilities of the vessel. Loss means that systems, component parts, sub-systems, or control systems do not perform the specified or required function;

(c) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service or route, including but not limited to fire, flooding, or failure or damage to fixed fire extinguishing systems, lifesaving equipment, auxiliary power generating equipment, or bilge pumping systems;

(d) Loss of life;

(e) Injury causing a person to remain incapacitated for a period in excess of 72 hours;

(f) An occurrence not meeting any of the above criteria but resulting in damage to property in excess of \$25,000.00. Damage includes the cost necessary to restore the property to the service condition which existed prior to the casualty, including the cost of salvage, gas freeing, and dry dock. It does not include such items as demurrage.

§ 185.15-5 Substance of marine casualty notice.

The notice required in § 185.15-1 must include the name and official number of the vessel involved, the name of the vessel's owner or agent, the nature and circumstances of the casualty, the locality in which it occurred, the nature and extent of injury to persons, and the damage to property.

§ 185.15-10 Report by officer in charge of vessel in person.

(a) In addition to the notice required by § 185.15-1, the person in charge of the vessel shall, as soon as possible, report in writing and in person to the Officer in Charge, Marine Inspection, at the port in which the casualty occurred or nearest the port of first arrival: *Provided*, That when due to distance it

may be inconvenient to report in person, it may be done in writing only. The written report for personnel accident shall be made on form CG-924E and shall be submitted for each individual injured and for each loss of life. For all other vessel casualties the written report shall be made on form CG-2692.

(b) If filed without delay, the forms CG-924E or CG-2692 may also provide the notice required by § 185.15-1.

§ 185.15-15 Voyage records, retention of.

(a) The owner, agent, master, or person in charge of any vessel involved in a marine casualty shall retain such voyage records as are maintained by the vessel, such as both rough and smooth deck and engine room logs, bell books, navigation charts, navigation work books, compass deviation cards, gyro records, stowage plans, records of draft, aids to mariners, night order books, radiograms sent and received, radio logs, crew and passenger lists, articles of shipment, official logs and other material which might be of assistance in investigating and determining the cause of the casualty. The owner, agent, master, other officer, or person responsible for the custody thereof, shall make these records available upon request, to a duly authorized investigating officer, administrative law judge, officer or employee of the Coast Guard.

§ 185.15-20 Report of accident to aid to navigation.

Whenever a vessel collides with a lightship, buoy, or other aid to navigation under the jurisdiction of the Coast Guard, or is connected with any such collision, it shall be the duty of the person in charge of such vessel to report the accident to the nearest Officer in Charge, Marine Inspection. No report on Form CG 2692 is required unless one or more of the results listed in § 185.15-1 occurs.

§ 185.15-25 Reports when state of war exists.

During the period when a state of war exists between the United States and any foreign nation, communications in regard to casualties or accidents shall be handled with caution and the reports shall not be made by radio or by telegram.

PART 196—OPERATIONS

18. By revising § 196.07-1(a) to read as follows:

§ 196.07-1 Notice of casualty.

(a) The owner, agent, master, or person in charge of a vessel involved in a marine casualty shall give notice as

soon as possible to the nearest Coast Guard Marine Safety or Marine Inspection Office whenever the casualty involves any of the following:

(1) All accidental groundings and any intentional grounding which also meets any of the other reporting criteria or creates a hazard to navigation, the environment, or the safety of the vessel;

(2) Loss of main propulsion or primary steering, or any associated component or control system, the loss of which causes a reduction of the maneuvering capabilities of the vessel. Loss means that systems, component parts, subsystems, or control systems do not perform the specified or required function;

(3) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service or route, including but not limited to fire, flooding, or failure or damage to fixed fire extinguishing systems, lifesaving equipment, auxiliary power generating equipment, or bilge pumping systems;

(4) Loss of life;

(5) Injury causing a person to remain incapacitated for a period in excess of 72 hours;

(6) An occurrence not meeting any of the above criteria but resulting in damage to property in excess of \$25,000.00. Damage includes the cost necessary to restore the property to the service condition which existed prior to the casualty, including the cost of salvage, gas freeing, and dry dock. It does not include such items as demurrage.

19. By revising § 196.07-5 to read as follows:

§ 196.07-5 Information required.

The notice required by § 196.07-1 must include the name and official number of the vessel involved, the name of the vessel's owner or agent, the nature and circumstances of the casualty, the locality in which it occurred, the nature and extent of injury to persons, and the damage to property.

(Sec. 10, 18 Stat 128 (33 U.S.C. 361); R.S. 4450, as amended (46 U.S.C. 239); R.S. 4405 (46 U.S.C. 375); 80 Stat 938 (49 U.S.C. 1655(b)(1); 49 CFR 1.46(b)))

Dated: November 17, 1980.

J. B. Hayes,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 80-36581 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF COMMERCE

Maritime Administration

46 CFR Part 276

Construction-Differential Subsidy Repayment; Total Repayment Policy

AGENCY: Maritime Administration, Commerce.

ACTION: Amendment to interim rule.

SUMMARY: On October 15, 1980, the Maritime Subsidy Board (the Board) published as amendment to 46 CFR Part 276—Construction-Differential Subsidy Repayment, as an interim rule (45 FR 68393). New § 276.3 states the policy of the Board in considering requests for the total repayment of construction-differential subsidy (CDS), as authorized under provisions of the Merchant Marine Act, 1936, as amended (the Act). The Board has decided to amend the regulation to clarify how interest on CDS repayment is calculated.

DATES: Effective October 15, 1980.

Comments are due on or before December 14, 1980.

ADDRESS: Send comments to Robert J. Patton, Jr., Secretary, Maritime Subsidy Board/Maritime Administration, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: William B. Ebersold, Director, Office of Trade Studies and Statistics, Maritime Administration, Washington, D.C. 20230, telephone (202) 377-4758.

SUPPLEMENTARY INFORMATION: On May 5, 1980, the Board published in the Federal Register a Notice of Proposed Rulemaking to amend 46 CFR Part 276 (45 FR 29610). The proposed amendment was substantially as published on November 2, 1978 (43 FR 51045), and further provided for the payment of interest. The Board authorized republication with further opportunity for public comment, because of a Supreme Court decision February 20, 1980 that the Secretary of Commerce has authority (delegated to the Board) to accept full repayment of CDS in return for removal of domestic trading restrictions imposed by the Act.

The Board has decided to amend § 276.3(c) of the interim rule, entitled "Repayment Terms", to clarify that interest applicable to the unamortized CDS is to be calculated from the day of disbursement of each CDS payment by the Board through the day of completion of the vessel and its delivery by the shipyard, or through the date of repayment, at the discretion of the Secretary. In addition, the amount of interest shall be computed at the same rates, and on the same terms and

conditions, as the owner obtained in financing his portion of the vessel during its period of construction, as opposed to a different interest rate for each semi-monthly payment. The purpose of this amendment to § 276.3 is to help insure that a CDS vessel making total repayment of CDS will operate in the domestic trade at a comparable capital cost to a domestic vessel already engaged in the trade. The advantage of construction with CDS would be nullified by the charging of interest on the CDS amount paid.

Accordingly, 46 CFR 276.3(c) is being amended after the first sentence to read as follows:

§ 276.3 Total repayment.

(c) Repayment Terms. * * *

Interest applicable to the unamortized CDS is to be calculated from day of disbursement of each CDS payment by the Board through the day of completion of the vessel and its delivery by the shipyard, or through the date of repayment, at the discretion of the Secretary. In addition, the amount of interest shall be computed at the same rates, and on the same terms and conditions, as the owner obtained in financing his portion of the vessel during its period of construction.

(Secs. 204(b), 207, 506, and 714 Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1117, 1156, and 1204); Pub. L. 86-518 (74 Stat. 216); Reorganization Plans No. 21 of 1960 (64 Stat. 1273), and No. 7 of 1961 (75 Stat. 840), as amended by Pub. L. 91-469 (84 Stat. 1036); and Department of Commerce Organization Order 10-8 (36 FR 19707 July 23, 1973))

(Catalog of Federal Domestic Assistance Program No. 11.500 (Construction-Differential Subsidies))

Dated: November 10, 1980.

By order of the Maritime Subsidy Board/
Maritime Administration.

Robert J. Patton, Jr.,

Secretary, Maritime Subsidy Board, Maritime Administration.

[FR Doc. 80-36584 Filed 11-21-80; 8:45 am]

BILLING CODE 3510-15-M

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 656

Atlantic Mackerel Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA) / Commerce.

ACTION: Promulgation of Final Regulations.

SUMMARY: These regulations implement the reserve allocation provisions of Amendment No. 1 to the Atlantic mackerel fishery management plan of the Northwest Atlantic Ocean (FMP). The provisions require the Regional Director, Northeast Region, NMFS, to: (1) Project the domestic annual harvest (DAH) during October of the fishing year; and (2) based upon the projection, allocate the appropriate amount of Atlantic mackerel, *Scomber scombrus*, from the reserve to the foreign fisheries.

EFFECTIVE DATE: November 24, 1980.

FOR FURTHER INFORMATION CONTACT: Allen E. Peterson, Jr., Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930; or Frank Grice, Chief, Fisheries Management Division, Northeast Region, National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts 01930. Telephone number for both individuals is (617) 281-3600.

SUPPLEMENTARY INFORMATION: The Assistant Administrator for Fisheries disapproved that part of Amendment No. 1 originally submitted by the Mid-Atlantic Fishery Management Council (Council) which set provisions for the allocation of mackerel from the reserve to the total allowable level of foreign fishing (TALFF) (45 FR 22144). The Council submitted a revision to the disapproved provision. The Assistant Administrator approved the revision, which authorizes the Northeast Regional Director to allocate the entire reserve on the basis of domestic catch levels.

Public Comments

The proposed regulations were published in the *Federal Register* on September 12, 1980 (45 FR 60457). No public comments were received.

Environmental Impact and Executive Order 12044:

A Supplementary Environmental Impact Statement (SEIS) for Amendment No. 1 was prepared (see Notice of Availability, 45 FR 37275). This action implements the amended FMP, and the Assistant Administrator has determined that it does not alter the context or intensity of impacts described in the SEIS. Therefore, pursuant to NOAA Directive 02-10, neither an Environmental Assessment nor an SEIS was prepared regarding these final regulations. Amendment No. 1 was determined by the Assistant Administrator to be nonsignificant under Executive Order 12044 and NOAA Directives Manual Chapter 21, Section

24. This regulation to implement the reserve allocation mechanism is also nonsignificant.

Other:

The mechanism to allocate the reserve to TALFF is set forth below as an amendment to Part 656. Because the allocation mechanism also affects the foreign fisheries, the regulations also amend Part 611.

Administrative Procedure Act:

The Assistant Administrator has determined that the 30-day "cooling" period required under the Administrative Procedure Act should be waived so that these regulations may have immediate effect. Because of unforeseen administrative delay, the procedure for allocation of reserve that was to be initiated in October and proposed by November 1 could not otherwise be accomplished in a timely manner. A proposed allocation of mackerel from the reserve will be subject to a 15-day comment period in accordance with these regulations.

(16 U.S.C. 1801 *et seq.*)

Signed at Washington, D.C., this the 19th day of November, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

PART 611—FOREIGN FISHING

50 CFR Part 611 is amended by adding § 611.52 as follows:

§ 611.52 Mackerel fishery.

(a) *Projections.* During October, the Regional Director will project the total amount of mackerel that will be harvested by U.S. fishermen during the entire fishing year. In making this projection, the Regional Director will consider not only the actual reported domestic harvest through September 30, but also the ability and intent of domestic harvesters and processors to harvest and process Atlantic mackerel during the remainder of the fishing year.

(b) *Allocation of Reserve.* If the projected amount of mackerel to be harvested by U.S. fishermen exceeds the initial level of harvest specified as DAH in Appendix 1 to § 611.20, the Regional Director will leave the excess in the reserve to allow the U.S. fishery to continue without closure throughout the year. The Regional Director will allocate the rest of the reserve to the total allowable level of foreign fishing (TALFF). If the projected amount of mackerel to be harvested by U.S. fishermen does not exceed the initial level of harvest specified as DAH in Appendix 1 to § 611.20, the Regional

Director will allocate the entire reserve to TALFF.

(c) *Notice of allocation.* (1) By November 1 the Regional Director will publish a notice stating the amount of mackerel proposed to be allocated from reserve to TALFF in the *Federal Register*. The public will be given 15 days from the date of publication to comment on the proposed allocation. During the comment period, the Regional Director will consult with the Executive Director of the Mid-Atlantic Council on the consistency of the proposed allocation with the objectives of the FMP.

(2) The Regional Director will publish a final notice of the decision on allocation in the *Federal Register*. It will contain a summary of all comments and relevant information received during the comment period and the latest catch statistics available for Atlantic mackerel.

(d) *Subsequent allocations.* After the initial allocation decision is made, the Regional Director may allocate any remaining portion of the reserve to TALFF, if he determines that the domestic harvest will not attain the level projected under paragraph (a) of this section. Notice of subsequent allocations will be made according to the procedures stated in paragraph (c) of this section.

PART 656—MACKEREL FISHERY OF THE NORTHWESTERN ATLANTIC OCEAN

50 CFR Part 656 is amended by adding § 656.22 as follows:

§ 656.22 Allocations.

(a) *Projections.* During October, the Regional Director will project the total amount of mackerel that will be harvested by U.S. fishermen during the entire fishing year. In making this projection, the Regional Director will consider not only the actual reported domestic harvest through September 30, but also the ability and intent of domestic harvesters and processors to harvest and process Atlantic mackerel during the remainder of the fishing year.

(b) *Allocation of Reserve.* If the projected amount of mackerel to be harvested by U.S. fishermen exceeds the initial level of harvest specified in § 656.21(a), the Regional Director will leave the excess in the reserve to allow the U.S. fishery to continue without closure throughout the year. The Regional Director will allocate the rest of the reserve to the total allowable level of foreign fishing (TALFF). If the projected amount of mackerel to be harvested by U.S. fishermen does not

exceed the initial level of harvest specified in § 656.21(a), the Regional Director will allocate the entire reserve to TALFF.

(c) *Notice of allocation.* (1) By November 1 the Regional Director will publish a notice stating the amount of mackerel proposed to be allocated from reserve to TALFF in the **Federal Register**. The public will be given 15 days from the date of publication to comment on the proposed allocation. During the comment period, the Regional Director will consult with the Executive Director of the Mid-Atlantic Council on the consistency of the proposed allocation with the objectives of the FMP.

(2) The Regional Director will publish a final notice of the decision on allocation in the **Federal Register**. It will contain a summary of all comments and relevant information received during the comment period and the latest catch statistics available for Atlantic mackerel.

(d) *Subsequent allocations.* After the initial allocation decision is made, the Regional Director may allocate any remaining portion of the reserve to TALFF, if he determines that the domestic harvest will not attain the level projected under paragraph (a) of this section. Notice of subsequent allocations will be made according to the procedures stated in paragraph (c) of this section.

[FR Doc. 80-36652 Filed 11-21-80; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 45, No. 228

Monday, November 24, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

Walnuts Grown in California; Proposed Free and Reserve Percentages for the 1980-81 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites written comments on marketing percentages for California walnuts during the 1980-81 season. The estimated 1980 walnut production is in excess of domestic markets, and the proposal is intended to tailor the supply to domestic needs. Excess supplies would be available chiefly for export. The percentages were recommended by the Walnut Marketing Board. The Board works with USDA in administering the Federal marketing order for California walnuts.

DATES: Comments must be received by December 10, 1980.

PROPOSED EFFECTIVE DATES: August 1, 1980, through July 31, 1981.

ADDRESS: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250, where they will be available for inspection during business hours.

FOR FURTHER INFORMATION CONTACT:

J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447-5053. The Final Impact Statement describing the options considered in developing this proposal and the impact of implementing each option is available on request from J. S. Miller.

SUPPLEMENTARY INFORMATION: This proposal has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified not "significant".

J. S. Miller has determined that an emergency situation exists which warrants less than a 60-day comment period. Handlers will be receiving, processing, and marketing 1980 crop walnuts in volume soon. Therefore, they must know as soon as possible what marketing percentages will be effective for the 1980-81 marketing year so they can plan their operations.

The proposal under consideration pertains to establishing free and reserve percentages for California walnuts of 71 percent and 29 percent, respectively, for the 1980-81 marketing year. The 1980-81 marketing year began August 1, 1980.

The marketing percentages would be established pursuant to § 984.45 of the marketing agreement, and order No. 984, both as amended (7 CFR Part 984), regulating the handling of walnuts grown in California. The amended marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The Walnut Marketing Board's recommendation is based on estimates for the current marketing year of supply, and inshell and shelled trade demands, adjusted for handler carryover. The total 1980-81 supply subject to regulation is estimated at 192.5 million pounds kernelweight. Inshell and shelled trade demands adjusted for handler carryover are estimated at 32.4 and 104.4 million pounds kernelweight, or a total adjusted trade demand of 136.8 million pounds kernelweight. Dividing this by the total 1980-81 supply subject to regulation of 192.5 million pounds kernelweight, and rounding to the nearest full percent results in a free percentage of 71 percent. Subtracting the resulting free percentage from 100 percent results in a reserve percentage of 29 percent.

The proposed marketing percentages would establish the supply of merchantable walnuts available to the domestic inshell and shelled markets at maximum quantities that reasonably can be expected to be utilized during the 1980-81 season, while also providing an ample supply of walnuts for use next year until the 1981 crop is available for market. The supplies in excess of 1980-81 domestic needs would be for export, oil, feed, or other outlets noncompetitive with outlets for free merchantable walnuts.

The proposal is as follows:

§ 984.226 Free and reserve percentages for California walnuts during the 1980-81 marketing year.

The free and reserve percentages for California walnuts during the marketing year beginning August 1, 1980, shall be 71 percent and 29 percent, respectively.

Dated: November 19, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 36568 Filed 11-21-80; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 993

[Docket No. F&V AO 201-A8]

Dried Prunes Produced in California; Hearing on Proposed Amendment of the Marketing Agreement, as Amended and Order, as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Public hearing on proposed amendment.

SUMMARY: The hearing is being held to consider proposed changes in the dried prune marketing agreement and order. The principle issues to be considered would (1) Eliminate the need for the Prune Administrative Committee to determine annually whether or not to establish an undersized regulation for dried prunes; (2) change the name of the Committee to the Prune Marketing Committee; (3) provide for a public member and alternate on the Committee; and (4) specify the basis for sharing Committee representation among cooperative marketing associations. Also to be considered are a number of proposed changes of a minor nature.

DATE: The hearing will be held on December 2, 1980, at 9:00 a.m., local time.

ADDRESS: Hearing Location: Room 543, 211 Main St., San Francisco, Calif.

FOR FURTHER INFORMATION CONTACT:

J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447-5053. The Draft Impact analysis describing the options considered in developing this notice of hearing and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendment, hereinafter set forth, and any appropriate modifications thereof, of the marketing agreement, as amended, and Order No. 993, as amended, regulating the handling of dried prunes produced in California.

The proposed amendment, set forth below, has not received the approval of the Secretary of Agriculture.

This proposed action has been reviewed under the USDA procedures established in the Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified significant.

Proposed By the Prune Administrative Committee

Proposal No. 1

Section 993.21c is revised to read as follows:

§ 993.21c Salable prunes.

"Salable prunes" means those prunes which are free to be handled pursuant to any salable percentage established by the Secretary pursuant to § 993.54, or, if no reserve percentage is in effect for a crop year, all prunes, excluding the quantity of undersized prunes determined pursuant to § 993.49(c), received by handlers from producers and dehydrators during that year.

Proposal No. 2

Section 993.24 is amended by revising the introductory paragraph and adding a new paragraph (e) to read as follows:

§ 993.24 Establishment and membership.

A Prune Marketing Committee (herein referred to as the "Committee"), consisting of 22 members with an alternate member for each such member, is hereby established to administer the terms and provisions of this part, of whom with their respective alternates, 14 shall represent producers, 7 shall represent handlers, and 1 shall represent the public. Committee membership shall be allocated in accordance with the following grouping with the alternate positions identically allocated:

(e) The public member shall have no

financial interest in the prune industry.

Section 993.27 is revised to read as follows:

§ 993.27 Eligibility.

Producer members of the Committee shall be at the time of their selection, and during their term of office, a producer in the group, and if to represent a district also a producer in the district for which selected, and, except for producer members representing cooperative producers, shall not be engaged in the handling of prunes either in a proprietary capacity or as a director, officer, or employee. Handler members of the Committee shall be handlers in the group they represent or directors, officers, or employees of such handlers. These requirements shall not apply to the public member and alternate member.

In Section 993.28 a new paragraph (e) is added to read as follows:

§ 993.28 Nominees.

(e) The producer and handler members of the Committee selected for new term of office shall nominate a public member and alternate member at the first meeting following their selection.

Proposal No. 3

Section 993.28(b) is revised to read as follows:

§ 993.28 Nominees.

(b) Nominations of producer members to represent cooperative producers and handler members to represent cooperative handlers shall be submitted to the Secretary by cooperative marketing associations engaged in the handling of prunes before April 16 of each year in which nominations are made. The number of cooperative producer members and handler members to be nominated by each cooperative marketing association shall bear, as near as practicable, the same percentage as each cooperative marketing association's tonnage of prunes handled as first handler thereof bears to the total tonnage handled by all cooperative marketing associations as first handlers thereof during the crop year preceding such nomination year.

Proposal No. 4

Section 993.33 is revised to read as follows:

§ 993.33 Voting procedure.

Decisions of the Committee shall be by majority vote of the members present and voting and a quorum must be present: *Provided*, That decisions on marketing policy, grade or size

regulations, pack specifications, salable and reserve percentages, and on any matters pertaining to the control or disposition of reserve prunes or to prune plum diversion pursuant to § 993.62, including any delegation of authority for action on such matters and any recommendation of rules and procedures with respect to such matters, including any such decision arrived at by mail or telegram, shall require at least 14 affirmative votes. A quorum shall consist of at least 13 members of whom at least 8 must be producer members and at least 4 must be handler members. Except in case of emergency, a minimum of 5 days advance notice must be given with respect to any meeting of the Committee. In case of an emergency, to be determined within the discretion of the chairman of the Committee, as much advance notice of a meeting as is practicable in the circumstances shall be given. The Committee may vote by mail or telegram upon due notice to all members, but any proposition to be so voted upon first shall be explained accurately, fully, and identically by mail or telegram to all members. When any proposition is submitted to be voted on by such method, one dissenting vote shall prevent its adoption.

Proposal No. 5

Section 993.49(c) is revised to read as follows:

§ 993.49 Incoming regulation.

(c) In any crop year no handler shall receive prunes from producers or dehydrators, other than as undersized prunes, which pass freely through a round opening as follows: For French prunes the diameter of the round opening shall be 23/32 of an inch, and for non-French prunes the diameter of the round opening shall be 28/32 of an inch: *Provided*, That the Secretary upon a recommendation of the Committee, may establish larger openings whenever it is determined that supply conditions for a crop year warrant such regulation. The quantity of undersized prunes in any lot received by a handler from a producer or dehydrator shall be determined by the inspection service and entered on the applicable inspection certificate.

Proposal No. 6

Section 993.53 is revised to read as follows:

§ 993.53 Above parity situations.

The minimum standards, the minimum sizes, including the minimum undersized regulation prescribed in § 993.49(c), and the provisions of this part relating to administration shall continue in effect irrespective of whether the estimated season average price for prunes is in excess of the parity levels specified in section 2(1) of the act.

Proposal No. 7

Section 993.55 is revised to read as follows:

§ 993.55 Application of salable and reserve percentages after end of crop year.

The salable and reserve percentages established for any crop year shall remain in effect in the subsequent crop year until salable and reserve percentages are established for that crop year. After such percentages are established, all reserve obligations shall be adjusted to the newly established percentages.

Proposed By the U.S. Department of Agriculture*Proposal No. 8*

Make such changes as may be necessary to make the entire marketing agreement and order conform with any amendments thereto that may result from this hearing.

Copies of this notice may be obtained from the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, or may be inspected there.

Signed at Washington, D.C. on: November 18, 1980.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 80-36611 Filed 11-21-80; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION**10 CFR Part 50****Domestic Licensing of Production and Utilization Facilities; Fracture Toughness Requirements for Nuclear Power Reactors***Correction*

In FR Doc. 80-35207, appearing at page 75536, in the issue of Friday, November 14, 1980, make the following correction:

On page 75538, Appendix H, third column the formula in the third line from

the bottom of the page should read "(E>1MeV)".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 80-NW-52-AD]

Airworthiness Directives: All Boeing 720 and 720B airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Airworthiness Directive (AD) 80-15-10 Amendment 39-3856 (45 FR 49910 July 28, 1980) required a one-time high frequency eddy current inspection of wing lower surface stringers 5 and 7 between wing stations (WS) 265 and 470 on all 720 and 720B airplanes. Five operators had reported cracks in these stringers and/or adjacent skins on five different airplanes. If the skin is cracked in combination with a complete severance of a stringer, a situation may exist in which limit load cannot be carried. The purpose of the one-time inspection was to provide immediate protection for the fleet while also allowing time to evaluate the damaged structure so that suitable reinspection intervals could be determined. Following engineering evaluation, reinspection intervals have been determined and are proposed herein to require repetitive inspections for the affected stringers and wing skins.

DATES: Comments must be received on or before January 1, 1981.

ADDRESSES: Send comments on the proposal in duplicate to: Federal Aviation Administration, Northwest Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 80-NW-52-AD, East Marginal Way South, Seattle, Washington 98108.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, P. E. Airframe Branch, ANW-120S, Seattle Area Aircraft Certification Office, FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, telephone (206) 767-2516.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communication should identify the regulatory docket or notice

number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM's

Any person may obtain a copy of this notice or proposed rule making (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Region, Office of the Regional Counsel, Attention: Airworthiness Rule Docket, Docket No. 80-NW-52-AD, 9010 East Marginal Way South, Seattle, Washington 98108.

Discussion of the Proposed Rule

Five operators reported cracks in the wing lower skin and/or stringers 5 and 7 on five airplanes which had accumulated 26,000 to 50,900 landings (20,100 to 47,000 flight hours). On two airplanes, stringer 5 was severed at W.S. 374 and 379; on two other airplanes stringer 7 was severed at W.S. 310 and 346. Stringer 7 was found partially severed on a fifth airplane. Seven skin cracks were found at the affected stringers at W.S. 308, 310, 346, 351, 374, and 379. These cracks varied in length from 0.75 to 8.0 inches. Cracking was attributed to fatigue.

The severance of stringers 5 and/or 7 in conjunction with skin cracks in the same area will impose an additional load on adjacent stringers and skin. Failure to detect skin cracks prior to their growing to a critical length, in combination with a severed stringer, will result in degradation of the wing lower surface strength below regulatory fail-safe load requirements. For this reason, AD 80-15-10 required a one-time high frequency eddy current inspection of the 720/720B fleet. It is anticipated that repetitive inspection requirements would be developed based on the results of this initial inspection analysis of the original cracks.

After extensive evaluation of the original crack data, repeat inspections of the two affected stringers by means of low frequency eddy current techniques at intervals of 2,860 landings are proposed. The AD is proposed to be

amended to make the repeat inspection mandatory.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) by amending AD 80-15-10 (Amendment 39-3852 45 FR 49910, July 28, 1980) as follows:

Change paragraphs A and B to read as follows:

A. Within 500 landings after the effective date of this Amendment and thereafter at intervals not to exceed 2,860 landings, conduct a low frequency eddy current inspection of the wing lower surface for cracks in the stringer/skin between wing stations 265 and 470 and stringers 5 and 7 in accordance with Boeing Service Bulletin A3395 Revision 2, dated October 10, 1980, or later FAA approved revisions or in a manner approved by the Chief, Seattle Area Aircraft Certification Office. Skin/stringers found cracked, must be repaired prior to further flight in a manner approved by the Chief, Seattle Area Aircraft Certification Office.

B. Airplanes may be flown to a maintenance base for repairs or replacement in accordance with FAR 21.197.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.85)

Note.—The FAA has determined that this document involves a regulation which is not considered to be significant under the provisions of Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 1034; February 26, 1979).

Issued in Seattle, Wash., on November 12, 1980.

Jonathan Howe,

Acting Director, Northwest Region.

[FR Doc. 80-36510 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

(Airspace Docket No. 80-AAL-22)

Establishment of Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Federal Airways, V-388, between Anchorage, Alaska, and Kenai, Alaska, and G-6, between St. Marys, Alaska, and Sparrevohn, Alaska, via Aniak, Alaska. The need for these airways is prompted by significant increase of air traffic between Anchorage and Kenai and between Sparrevohn, Aniak, and St. Marys Airports. Establishment of these routes would result in improved procedures for air traffic control (ATC) by allowing

more efficient use of controlled airspace, thereby reducing delays to users.

DATES: Comments must be received on or before December 24, 1980.

ADDRESSES: Send comments on the proposal in triplicate to:

Director, FAA Alaskan Region,
Attention: Chief, Air Traffic Division,
Docket No. 80-AAL-22, Federal
Aviation Administration, P.O. Box 14,
701 C Street, Anchorage, Alaska
99513.

The official docket may be examined at the following location:

FAA Office of the Chief Counsel, Rules
Docket (AGC-204), Room 916, 800
Independence Avenue, SW.,
Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:
Jack Overman, Airspace Regulations
Branch (AAT-230), Airspace and Air
Traffic Rules Division, Air Traffic
Service, Federal Aviation
Administration, 800 Independence
Avenue, SW., Washington, D.C. 20591;
telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Alaskan Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 14, 701 C Street, Anchorage, Alaska 99513. All communications received on or before December 24, 1980, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of

Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.103 and § 71.125 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that would establish Federal Airways V-388, between Anchorage, Alaska, and Kenai, Alaska, and G-6 between St. Marys, Alaska, and Sparrevohn, Alaska, via Aniak, Alaska. Establishment of the V-388 airway would provide more efficient ATC services between Anchorage and Kenai. The need for V-388 is prompted by the significant increases of air traffic between Anchorage and the Kenai Airports, especially during the annual fish harvest. The establishment of this airway would allow specific procedures to be established and the initiation of flow patterns for single direction traffic, thus eliminating head-on traffic situations. The airway would allow these procedures to be used even in a nonradar environment should the Center encounter periods of radar outages and would reduce delays to users.

The need for Green 6 is dictated by significant increases in air traffic between Sparrevohn, Aniak, and St. Marys Airports, and the need for air traffic control between the transition areas for the affected airports. The establishment of the airway would cancel the nonpart 95 route already established and at the same time allow controllers to more accurately determine the protected airspace for each aircraft and to provide for a more efficient use of airspace, thereby reducing delays to users. Section 71.103 and § 71.125 of Part 71 were republished in the *Federal Register* on January 2, 1980 (45 FR 305, 342).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.103 and § 71.125 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 305, 342) as follows:

1. Add "G-6 From St. Marys, Alaska, NDB via Aniak, Alaska, NDB to Sparrevohn NDB."

2. Add "V-388 From Anchorage, Alaska, to INT Anchorage 173°M(198°T) and Kenai, Alaska, 037°M(062°T); Kenai, Alaska."

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a); 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive

Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C., on November 14, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-36519 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-AAL-20]

Alteration of Low Frequency Airway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign Green Airway 10 between Elfee, Alaska, NDB and Port Heiden, Alaska, NDB. The present alignment of G-10 from Humboldt, Alaska, NDB has proven to be unusable. The realignment would enhance the traffic flow in the area.

DATES: Comments must be received on or before December 24, 1980.

ADDRESSES: Send comments on the proposal in triplicate to:

Director, FAA Alaskan Region,
Attention: Chief, Air Traffic Division,
Docket No. 80-AAL-20, Federal
Aviation Administration, P.O. Box 14,
701 C Street, Anchorage, Alaska
99513.

The official docket may be examined at the following location:

FAA Office of the Chief Counsel, Rules
Docket (AGC-204), Room 916, 800
Independence Avenue, SW.,
Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Lewis Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Alaskan Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 14, 701 C Street, Anchorage, Alaska 99513. All communications received on or before December 24, 1980, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C., 20591, or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.103 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that would realign Green Airway 10 from Elfee, Alaska, NDB to Port Heiden, Alaska, NDB. The present alignment of G-10 utilizing the Humboldt, Alaska, NDB 345° bearing is not usable, according to flight check data. In lieu of revoking that portion of G-10 between Humboldt NDB and G-8, the FAA believes Air Traffic Control would be enhanced by this realignment and it would also aid flight planning. Section 71.103 of Part 71 was republished in the *Federal Register* on January 2, 1980, (45 FR 305).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.103 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 305) as follows:

Under § 71.103 Green Federal Airways

G-10 is rewritten to read as follows:

G-10 From Alfee, Alaska, NDB via INT Elfee NDB 041°T(024°M) and Port Heiden, Alaska, NDB 248°T(229°M) bearings; Port Heiden NDB; 67 miles 12 AGL, 77 miles 85 MSL, 67 miles 12 AGL, to Woody Island, Alaska, NDB.

(Secs 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.65)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C., on November 18, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-36518 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-ANW-17]

Proposed Alteration of 1200' Transition Area, Spokane, Washington

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rule making.

SUMMARY: This notice proposes to alter transition airspace in the vicinity of Pullman, Washington, to more fully utilize the airspace for arriving and departing aircraft.

DATES: Comments must be received on or before January 2, 1981.

ADDRESSES: Send comments on the proposal in triplicate to:

Chief, Operations, Procedures and Airspace Branch, Federal Aviation Administration, Northwest Region, FAA Building, Boeing Field, Seattle, Washington 98108.

The official docket may be examined at the following location:

Office of the Regional Counsel, Federal Aviation Administration, Northwest Region, FAA Building, Boeing Field, Seattle, Washington 98108.

FOR FURTHER INFORMATION CONTACT:

Robert L. Brown, Airspace Specialist, Operations, Procedures and Airspace Branch, (ANW-534), Air Traffic Division, Federal Aviation Administration, Northwest Region, FAA

Building, Boeing Field, Seattle, Washington 98108; telephone (206) 767-2610.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rule making by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 80-ANW-17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rule making will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rule Making by submitting a request to the Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, ANW-530, Northwest Region, FAA Building, Boeing Field, Seattle, Washington, 98108 or by calling (206) 767-2610. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Spokane, Washington, 1200 foot transition area. This proposal would allow assignment of significantly lower altitudes for

aircraft on direct routes or radar vectors from the Lewiston and Pullman areas to Spokane, Washington. The description of this transition area under Part 71 was republished on January 2, 1980. (45 FR 445).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 445), as follows:

Spokane, Washington [Amended]

By amending the description beginning on line 11 by inserting the words "area bounded on the east by a line parallel to and 10 miles east of V253, on the south by V536, on the west by the east edge of V112E; that airspace southeast of Spokane extending upward from 6,000 feet MSL, bounded on the north by the arc of a 38 mile radius circle centered on the Fairchild AFB, on the northeast by V-2S, on the southeast by the arc of the 52 mile radius area, on the southwest by a line parallel to and 10 miles northeast of V253, that airspace southeast of Spokane extending upward from 7,000 feet MSL bounded on the northwest by the 52 mile radius area, on the north by V2S, on the southeast by the north edge of V536 and on the southwest by a line parallel to and 10 miles northeast of V253."

This amendment is proposed under the authority of (Sec. 307(a), 313(a), and 1110, Federal Aviation Act of 1958, (49 U.S.C. §§ 1348(a), 1354(c), and 1510); Sec. 6(c) Department of Transportation Act (49 U.S.C. § 1655(c)); and 14 CFR 11.65).

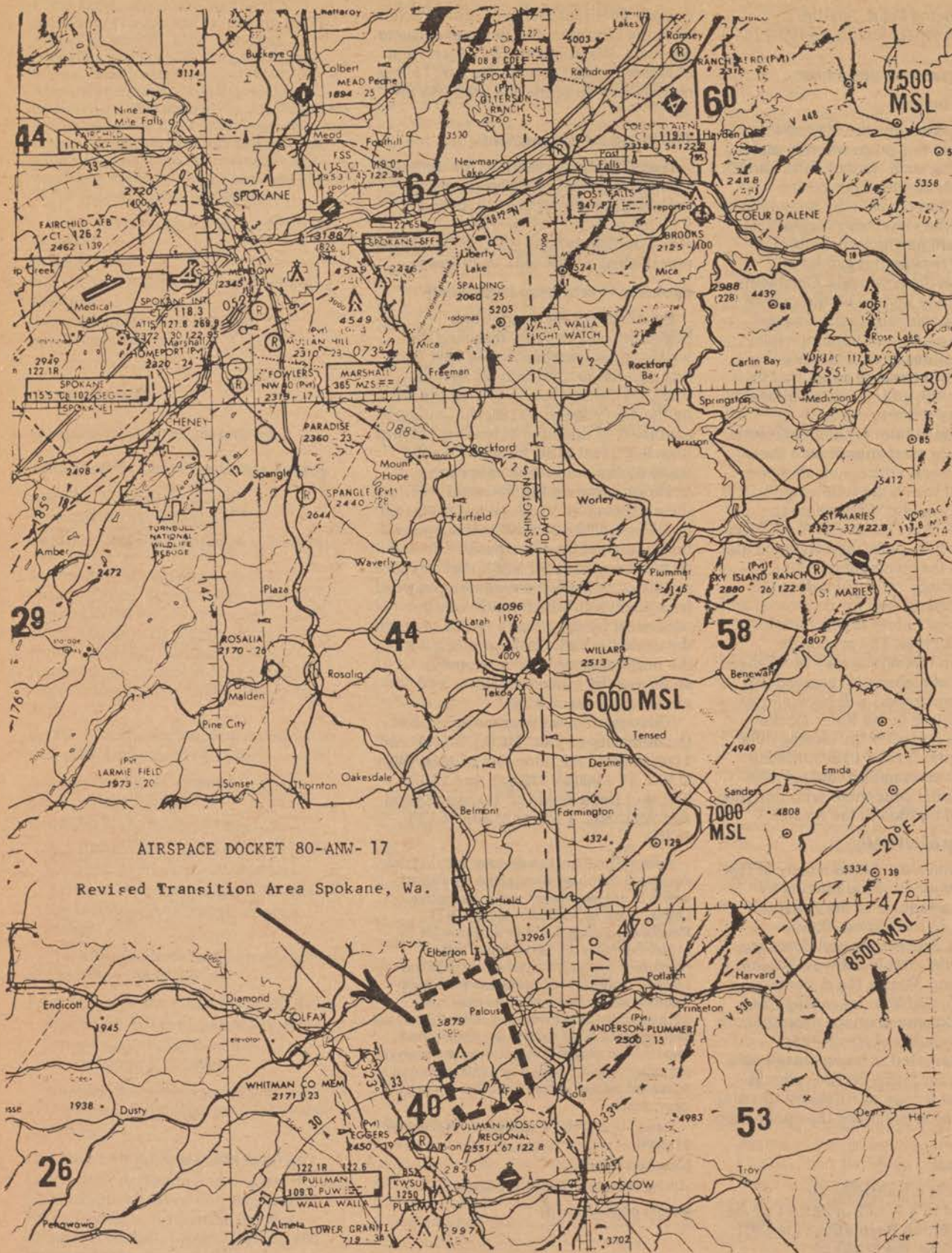
Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote flight safety, the anticipated impact is so minimal that it does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Seattle, Washington, November 13, 1980.

Jonathan Howe,

Acting Director, Northwest Region.

BILLING CODE 4910-13-M



Federal Highway Administration**23 CFR Part 635****[FHWA Docket No. 80-1]****Buy America Requirements: Proposed Revisions****AGENCY:** Federal Highway Administration (FHWA), DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Federal Highway Administration (FHWA) requests comments on proposed revisions to its Buy America regulation. The revised regulation would require the use of domestic steel construction materials on most federally-assisted highway projects. These proposed revisions are being issued in response to comments received on the emergency regulation issued on November 17, 1978.

DATE: Comments must be received on or before January 23, 1981.

ADDRESS: Interested persons are invited to submit written comments to FHWA Docket No. 80-1, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comment must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Peter R. Picard, Construction and Maintenance Division, (202) 426-4847, or Stanley H. Abramson, Office of the Chief Counsel, (202) 426-0762, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: On November 6, 1978, the President signed into law the Surface Transportation Assistance Act of 1978 (STAA), Pub. L. 95-599, 92 Stat. 2689. The provisions of Section 401, Buy America, were effective immediately and required immediate implementation. A final rule was issued under emergency procedures on November 17, 1978 (43 FR 53717). Comments on the regulation were invited and received in FHWA Docket No. 78-35 through January 17, 1979.

The revised regulation would include the following major elements:

1. The coverage of the Buy America requirements would be extended to all steel construction materials in highway construction projects. No other materials would be covered. Contracts for projects

concerning equipment and ferry boats would follow 49 CFR 660, the Buy America requirements issued by the Urban Mass Transportation Administration in December 1978 (43 FR 57145).

2. Buy America requirements would continue to apply to all Federal-aid highway construction projects estimated to cost over \$450,000. However, the requirements would not prevent *de minimus* use of foreign steel, if the amount of foreign steel used does not exceed one-tenth of one percent (0.1 percent) of the total contract and domestic steel is otherwise required. This would avoid unnecessary red tape on projects where foreign steel is used in truly insignificant amounts.

3. The current alternate bidding procedure would apply on all projects where structural steel would be permanently incorporated into highway bridges and tunnels.

4. Procedures would be included under which State highway agencies could request waivers of the Buy America requirements in the public interest or for steel construction materials which are not in sufficient or reasonably available supply and of a satisfactory quality from domestic sources.

5. Projects funded as part of the territorial highway program would be covered under the proposed requirements.

6. Buy America requirements would not be covered by the optional Certification Acceptance Procedures (23 CFR 640), because the Buy America statute is not a part of Title 23 of the United States Code (U.S.C.).

7. Several clarifying definitions would be added to the regulation. For example, a definition of "overall project contract" would be added to make clear that the 10 percent domestic preference applies to each contract and not to an overall project which may consist of several contracts. A definition of "equipment" would be added to exclude items which would be incidental to highway construction and not intended to be permanent improvements to land.

Thirty-two comments were received in response to issuance of the current regulation. These comments were submitted by representatives of the following interest groups: 11 steel producers and suppliers, 9 government agencies, 7 port authorities and steel importers, and 5 other interested parties. A complete summary and analysis of these comments has been prepared and placed in the public docket (78-35). The major comments and FHWA's responses are summarized below.

Five respondents indicated support for the Buy America provision and nine respondents indicated opposition. The State highway agencies generally supported the concept of Buy America preference. Comments from the domestic steel industry and the import industry were diametrically opposite. The steel industry requested expansion of the scope of the regulation and the import industry wanted complete rescission of Buy America.

Sixteen responses were received on the scope or applicability of the regulation to specific materials. Again, the steel and import industry points of view were opposite. The State highway agencies urged caution in expanding the scope of the regulation to specific products such as portland cement, aluminum products, paint, asphalt, galvanized products, signal controllers, prestressing strand, steel culverts, various plastic products, fertilizer, and other small structural steel shapes.

Foreign steel has been identified as the only foreign commodity having a significant nationwide effect on the cost of Federal-aid highway construction projects. Its continued unrestricted use is contrary to Section 401 of the STAA. Therefore, it is proposed to implement Buy America for steel products only, with the provision that the FHWA may grant waivers based on the public interest or on factual justification of shortages and nonavailability. Two other types of commodities are used in large amounts as materials for Federal-aid highway construction: natural materials, such as sand, stone, gravel, and earth materials; and petroleum and petroleum-based products, such as fuels, lubricants, and bituminous products. Foreign competition in natural materials is not experienced, because of the difficulty and high cost of transportation due to their bulk and weight. For this reason, these materials are usually procured on or near the construction site and have been virtually all domestic, not requiring the protection of Buy America. Petroleum and petroleum-based products are not available from domestic sources in sufficient and reasonably available quantities. Other products are not used in sufficient quantity to have any appreciable effect on the overall cost of a project and do not require protection. It is therefore, proposed to waive application of Section 401 on all products other than steel.

The import industry contended that the existing regulation would lead to increased inflation, particularly on the West Coast of the United States. A survey of contracts awarded from

December 1977 through April 1979, which would be subject to the current regulation, indicated that a very small quantity (1,300 tons) of structural steel was included in Federal-aid highway projects for this period. The West Coast steel importers furnished information that 250,000 tons of structural steel of the type covered by the current regulation were handled in a typical year through California ports. Although usage factors are subject to variation, FHWA concluded that only about one-half of one percent of West Coast imported steel was destined for Federal-aid highway projects during that period.

The import industry also contended that widespread unemployment would result in its sector if the current regulation was implemented. Again, the small amount of structural steel used during the recent past would appear to dispute the import industry's contention.

The following specific questions about application and intent of the current regulation were raised by several comments.

1. Q: Does the regulation apply to miscellaneous steel items such as guardrail posts and hardware? A: The proposed rule would require domestic steel construction materials for this work on all projects over \$450,000.

2. Q: What is meant by "domestic"? A: A definition has been included in the proposed rule. The definition incorporates guidance previously provided to FHWA field offices on this subject.

3. Q: What is FHWA's authority and/or reasoning for expanding coverage to projects costing less than \$500,000? A: At the time of project approval by FHWA, only estimated costs are available. The final contract amount could exceed the estimate by a nominal amount (say 10 percent) and still result in a contract award. If the estimate were less than \$500,000, the Buy America provisions were not followed, and the low bid exceeded \$500,000, the contract could not be awarded because of lack of Buy America preference as specified by law. The FHWA considers this expansion of applicability reasonable and proper to allow the program to continue without undue red tape and administrative difficulties. Its effect should be minimal.

An alternative is available which would allow the FHWA regulation to match the \$500,000 applicability level of Section 401. It would be applied after bids are received, but would require alternative bids for all projects on which structural steel is to be permanently installed on highway bridges and tunnels. This alternative is considered to be more administratively burdensome than the proposed rule. The FHWA

expressly solicits comments from the public on the merits of this alternative for use in developing the final regulation.

Several modifications were suggested to further reduce the administrative problems of complying with the regulation.

1. Two State highway agencies suggested that the contract should contain a significant amount of structural steel before the alternate bidding requirements are necessary, since small quantities of structural steel could not possibly have an overall 10 percent effect on project costs. The FHWA agrees and proposes to apply the alternate bid requirements only where structural steel is required for construction of highway bridge or tunnel structures. With this change, the alternate bidding requirements would not be applicable to minor quantities of structural steel, and domestic steel would be required.

2. One State highway agency asked that specific penalty provisions be established for violations. The FHWA does not consider this action necessary since the contracting agency has the obligation and authority to apply normal contract remedies for items which do not meet contract requirements or specifications.

3. One State suggested that a "Certification of Compliance" should be required. The FHWA does not agree, but will allow contracting agencies to require such a certificate at their option.

4. One steel company suggested a change of the definition of "domestic" to "not more than 25 percent of components derived from foreign origin." The FHWA does not agree since the legislative history of the STAA suggests that Buy America be applied in accordance with the Buy America Act of 1933 (41 U.S.C. 10a-d), and the Federal Procurement Regulations (41 CFR 1-18.6), which apply the 50 percent criterion.

5. One importer suggested that the 10 percent preference should apply only to the costs of materials. The FHWA does not agree since this is not consistent with the language of the STAA.

Docket Number 80-1 has been assigned to this proposed regulation and the public is invited to submit comments. The comments should specifically address the effect of the proposed regulation on the highway and steel industries and the effect of the procedures on the Federal-aid program in the States. Comments on the scope of coverage, particularly as revised in this notice of proposed rulemaking, should be supported by verifiable facts and figures wherever possible. The FHWA is

also interested in receiving reliable information concerning the cost differential between domestic and foreign steel, the economic effects of the current and proposed regulations, and any effects of the regulations on small businesses.

Note.—The Federal Highway Administration has determined that this document contains a significant proposal according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. A draft regulatory analysis is available for inspection in the public docket and may be obtained by contacting Mr. Peter R. Picard, of the FMWA Construction and Maintenance Division at the address specified above.

In consideration of the foregoing, and under the authority of Section 401, Surface Transportation Assistance Act of 1978, Pub. L. 95-599, 92 Stat. 2689; 23 U.S.C. 315; and 49 CFR 1.48(c)(1), it is proposed to amend Chapter I of Title 23, Code of Federal Regulations, by revising § 635.410 to read as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.)

Issued on: November 17, 1980.

John S. Hassell, Jr.,

Federal Highway Administrator.

635.410 Buy America requirements.

(a) *Applicability.* The requirements of this section apply to all Federal-aid highway construction projects estimated to cost more than \$450,000. These requirements also apply to projects funded as part of the territorial highway program. Projects concerning equipment and ferry boats authorized under Title 23, U.S.C., shall comply with the requirements of 49 CFR 660 as issued by the Urban Mass Transportation Administration (43 FR 57145, December 6, 1978).

(b) *Definitions.*

(1) "Component"—any article, material, or supply directly incorporated in construction material.

(2) "Construction material"—any article, material, or supply brought to the construction site for incorporation into the project. An individual construction material is the smallest single item, subassembly, or assembly which is delivered to the construction site.

(3) "Domestic"—manufactured in the United States, if the costs of components which are mined, produced or manufactured in the United States exceed 50 percent of the costs of all components. The cost of components

includes all transportation costs to the place of incorporation into the construction material and the duty imposed on components of foreign origin.

(4) "Equipment"—any moveable personal property such as vehicles or machinery, but excluding permanent structures, appurtenances, and improvements upon real property incidental to highway construction.

(5) "Overall project contract"—means each individual third party contract for a discrete portion of the overall project.

(6) "Structural steel"—steel sheet piling, H-piling, I-beams, plates, channels, angles, and/or T-sections.

(7) "United States"—the 50 States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States of America.

(c) *General.* All steel construction materials which are to be permanently incorporated into applicable projects are to be domestic origin except to the extent provided by one or more of the following provisions:

(1) The competitive bidding procedure set forth in paragraph (d) of this section results in an award of contract based on the foreign steel alternate. In this case, the use of foreign steel is acceptable, but is not mandatory, however, payment will be made at the unit price bid for foreign steel.

(2) Where domestic steel is otherwise required in compliance with the requirements of this section, foreign steel may be supplied in minor amounts not to exceed one-tenth of one percent (0.1 percent) of the total contract cost. Such minor amounts shall be considered in compliance with the requirements of furnish domestic steel.

(3) The FHWA has approved a waiver of applicability of the provisions of Section 401(a) of the Surface Transportation Assistance Act of 1978 (STAA), Pub. L. 95-599, 92 Stat. 2689, under paragraph (e)(2) of this section.

(4) The State elects to use standard contract provisions that have been in effect since the date of enactment of STAA (November 6, 1978) that favor the use of domestic materials and products, including steel construction materials, to the same or greater extent than the provisions here set forth.

(d) *Competitive bidding procedure.*

(1) If a project structural steel to be permanently incorporated into the highway bridge and tunnel structures, the bidding procedures set forth in paragraph (d)(3) of this section shall be used.

(2) If a project includes steel construction materials, other than structural steel, in sufficient quantity that inclusion of domestic material may

increase the cost of the overall project contract by more than 10 percent, a State may adopt the competitive bidding procedure set forth in paragraph (d)(3) of this section with FHWA concurrence.

(3) The bidding procedure set forth below shall be used in accordance with the requirements of paragraphs (d)(1) and (d)(2) of this section:

(i) A separate bid item shall be established for steel in accordance with the State highway agency's normal contracting methods.

(ii) For each such item, bidders are to be given the option of:

(A) Submitting a bid for domestic steel, or

(B) Submitting a bid for domestic steel and a bid for foreign steel.

(iii) Bidders are to be advised that the basis of award shall be the lowest responsive total bid based on domestic steel unless that bid exceeds the lowest responsive total bid based on foreign steel by more than 10 percent, in which case the award shall be made to the lowest responsive, responsible bidder. A suggested bidding provision entitled "Information Regarding Buy America Procedures" is included as an Appendix for this purpose.

(e) *Waivers.*

(1) The requirements of this section are not applicable to materials other than steel construction materials.

(2) A State may request a waiver of the provisions of Section 401(a) of the STAA if:

(i) The application of those provisions would be inconsistent with the public interest; or

(ii) Supplies of the class or kind to be used in the manufacture of articles, materials, supplies are not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

(3) A request for waiver, accompanied by supporting information, must be submitted in writing to the Regional Federal Highway Administrator (RFHWA) through the FHWA Division Administrator. A request must be submitted sufficiently in advance of the need for the waiver in order to allow time for proper review and action on the request.

(4) Requests for waivers may be made for specific projects, or for certain materials or products in specific geographic areas, or for combinations of both, depending on the circumstances.

(5) The denial of a request by the RFHWA may be appealed by the State to the Federal Highway Administrator, whose action on the request shall be considered administratively final.

(6) A request for waiver and an appeal for a denial of a request must include facts and justification to support the granting of the waiver. The FHWA response to a request or appeal will be in writing and made available to the public on request.

(7) In determining whether the waivers described in paragraph (e)(2) will be granted, the FHWA will consider all appropriate factors including, but not limited to, the cost, "redtape," and delay that would be imposed if the provision were not waived.

Appendix—Suggested Alternate Bidding Provision—Information Regarding Buy America Procedures

(a) Section 401 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599) generally requires that only domestic construction material be used in the performance of this contract. The implementing regulations applicable to this contract (23 CFR 635.410) provide that this requirement applies only to steel construction materials.

(b) Alternative bids will be accepted for foreign structural steel (i.e., sheet piling, H-piling, I-beams, plates, channels, angles, and/or T-sections) to be permanently installed in highway bridge or tunnel structures on this project, and for other steel construction materials if alternate bid items are included in the bid schedule.

(c) If the bidder desires to submit a bid for such foreign materials, the bidder must also submit an alternate bid for such materials from domestic sources. Failure to do so shall result in such bid being considered irregular.

(d) The award of contract will be based on the lower of the following:

(1) the lowest total bid based on domestic steel; or

(2) 110 percent of the lowest total bid based on the foreign steel alternate (the amount of the contract will be based on the actual bid).

(e) If the basis of award is domestic steel, foreign steel shall not be used. If the basis of award is foreign steel, either domestic or foreign steel shall be acceptable. In the latter case, payment will be made at the unit price for foreign steel.

(f) Domestic means manufactured in any of the 50 States, the District of Columbia, Puerto Rico, and other territories and possessions of the United States of America, if the costs of components which are mined, produced, or manufactured in the United States exceed 50 percent of the costs of all components. The costs of components include all transportation costs to the place of incorporation into the construction material and any duty

imposed on components of foreign origin.

(g) Where domestic steel is otherwise required by this contract, foreign steel may be supplied in minor amounts not to exceed one-tenth of one percent (0.1 percent) of the total contract cost.

[FR Doc. 80-36288 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-22-M

Coast Guard

33 CFR Part 117

[CGD 80-147]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, Houma Navigation Canal, Bayou La Carpe and Bayou Terrebonne, Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Terrebonne Parish Police Jury, the Coast Guard is considering changing the regulations governing the East Park Avenue, East Main Street and Bayou Dularge bridges over the Gulf Intracoastal Waterway, mile 57.6, 57.7 and 59.9 respectively; the State Highway 661 bridge over the Houma Navigation Canal, mile 36.0; the State Highway 661 bridge over Bayou La Carpe, mile 7.5; and, the Daigeville bridge over Bayou Terrebonne, mile 35.5. All bridges are in Houma, Louisiana.

The six bridges are low level except Bayou Dularge which is a semi-high rise with a vertical clearance of 40 feet in the closed position. All bridges presently are required to open on signal at any time.

The proposed change is being considered in the form of two options: Option 1 would allow the draw of each bridge to remain closed from 7:00 to 8:30 a.m. and 4:30 to 6:00 p.m., Monday through Friday except holidays. Option 2 would divide the closure in the morning and afternoon, respectively, into two 45 minute intervals separated by an opening of the draw not to exceed 10 minutes to pass waiting navigation. Both options are intended to relieve overland traffic congestion during peak morning and afternoon vehicular traffic periods, while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before December 29, 1980.

ADDRESS: Comments should be submitted to and are available for examination from 9:00 a.m. to 3:00 p.m., Monday through Friday, at the Eighth Coast Guard District, Bridge

Administration Branch, Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana 70130.

FOR FURTHER INFORMATION CONTACT:

Joseph Irico, Chief, Bridge Administration Branch, at the address given above (504-589-2965).

SUPPLEMENTARY INFORMATION:

Interested parties are invited to participate in this proposed rule making by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reason for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclosed a stamped self addressed postcard or envelope.

DRAFTING INFORMATION: The principal persons involved in drafting this proposal are: Joseph Irico, Project Manager, District Operations Division, and Steve Crawford, General Attorney, District Legal Office.

Discussion of the Proposed Regulation

Waterway activity (largely barge tows) on the four waterways in the vicinity of the six bridges has remained basically unchanged, judging from the relatively constant number of bridge openings for the past five years for each bridge. In order of activity, the yearly openings were about 20,500 for the East Main and East Park bridges over the Gulf Intracoastal Waterway, 15,000 for State Highway 661 bridge over Houma Navigation Canal, 7500 for Bayou Dularge bridge over the Gulf Intracoastal Waterway, 5000 for State Highway 661 bridge over Bayou La Carpe and 2400 for Daigeville bridge over Bayou Terrebonne. East Park and East Main are in such close proximity to each other that they can be considered as one bridge.

Together with the Houma Tunnel, the six bridges operate as an integrated overland transportation system. A closure to vehicular traffic of one or more of the bridges during peak traffic periods interrupts the system and further overburdens the other crossings.

Temporary closures of the bridges to navigation have been authorized on seven (7) separate occasions to relieve overland traffic congestion, when the East Main Street bridge was inoperative and unavailable for vehicular use. These closures were for 1½ hours each in the morning and afternoon, Monday through Friday. The closure clock times were basically like those now being proposed in Option 1 and were in effect

intermittently between April 1977 and March 1979.

Data submitted by the Louisiana Department of Transportation and Development indicate that:

(1) In January 1980, the daily average number of vehicles crossing the six bridges was as follows during the proposed morning and afternoon closure period, Monday through Friday:

Bridge	Vehicles 7-8:30 a.m.	Vehicles 4:30-6:00 p.m.
East Main.....	1,785	2,352
East Park.....	579	740
Houma Navigation Canal.....	698	838
Bayou Dularge.....	916	994
Bayou La Carpe.....	838	1,081
Daigeville.....	(¹)	(¹)

¹ Not available but should be similar to East Park.

(2) During 1978, the daily average number of bridge openings and their total duration for the six bridges were as follows during the proposed morning and afternoon closure periods, Monday through Friday:

Bridge	Open- ings 7- 8:30 a.m.	Total dura- tion (min- utes)	Open- ings 4:30-6 p.m.	Total dura- tion (min- utes)
East Main.....	2.7	26	3.0	30
East Park.....	2.6	24	3.0	29
Houma Navigation Canal.....	2.1	18	2.2	16
Bayou Dularge.....	0.8	5	1.0	7
Bayou La Carpe.....	0.6	4	1.0	6
Daigeville.....	(¹)	(¹)	(¹)	(¹)

¹ Not available but should be less than the other bridges.

(3) The data indicate that East Main, the key bridge in the system, is available to pass overland traffic 64 minutes or 71% of the time in the morning, for a total of 1785 vehicles, and 60 minutes or 67% of the time in the afternoon, for a total of 2352 vehicles. Were the bridge available the full 90 minutes, an additional 725 vehicles could pass in the morning and 1176 in the afternoon, the number of vehicles now theoretically being delayed.

(4) One of the seven temporary closures mentioned above was between August 1, and September 22, 1978. During that time, the daily average number of barge tows delayed was about 5.3 in the morning and 8.0 in the afternoon for all bridges. The daily average time required for all waiting vessels to completely clear the bridges when the draws were opened after the closure periods was as follows:

Bridge	Time to clear bridges (minutes)	
	a.m.	p.m.
East Park	17.3	19.4
Houma Navigation Canal	11.3	13.3
Bayou Dularge	8.6	6.6
Bayou La Carpe	6.0	4.8

Option 2 which would close the draw of each bridge for 45 minutes, opening it for 10, and then closing it for another 45 minutes, should cut the time for navigation to clear each bridge by half. Using the times given above, reduced by half, yields a time to clear of 10 minutes or less. While the 10 minute opening would cause some delay to overland traffic, this delay would be offset by a corresponding gain for this traffic since the next opening would be of shorter duration because of fewer vessels waiting to pass.

The Coast Guard feels that both of the proposed options would provide relief to overland traffic during peak morning and afternoon traffic periods with Option 2 probably having the lesser effect on navigation. In any event, the reasonable needs of navigation should be met, particularly if barge movement is scheduled to allow for the closures.

The Louisiana Department of Transportation and Development presently is planning to replace both East Main and East Park bridges with high-level fixed bridges. When this project materializes, operating restrictions for other bridges may no longer be necessary.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations be amended by adding a new § 117.537 as set forth in either Option 1 or 2 below:

§ 117.537 Gulf Intracoastal Waterway, mile 57.6 (East Park Ave.), mile 57.7 (East Main St.) and mile 59.9 (Bayou Dularge); Houma Navigation Canal, mile 36.0 (State Highway 661); Bayou La Carpe, mile 7.5 (State Highway 661); and, Bayou Terrebonne, mile 35.5 (Daigleville), all at Houma, LA.

Option 1: The draws need not open for the passage of vessels Monday through Friday except holidays, from 7:00 a.m. to 8:30 a.m. and 4:30 p.m. to 6:00 p.m. At all other times, the draws shall open promptly on signal.

Option 2: The draws need not open for the passage of vessels Monday through Friday except holidays from 6:50 a.m. to 7:35 a.m. and 7:45 a.m. to 8:30 a.m.; from 4:20 p.m. to 5:05 p.m. and 5:15 p.m. to 6:00 p.m. At all other times, the draws shall open promptly on signal.

(Sec. 5, 28 Stat. 363, as amended, sec. 6(g)(2), 80 Stat. 937; (33 U.S.C. 499, 49 U.S.C. 1655(g)(2)); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(g)(3))

Dated: November 14, 1980.

P. A. Yost,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 80-36579 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 7

[AS-FRL-1679-4]

Proposed Consolidated Non-discrimination Regulations

November 17, 1980.

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent.

SUMMARY: The Environmental Protection Agency gives notice that its proposed consolidated non-discrimination regulations will be ready for publication on or about December 6, 1980. This regulation will implement Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, and Section 13 of the Clean Water Act of 1977.

FOR FURTHER INFORMATION CONTACT:

Bob C. Downes (202) 755-0540.

Eduardo Terrones,

Director, Office of Civil Rights

[FR Doc. 80-36535 Filed 11-21-80; 8:45 am]

BILLING CODE 6560-36-M

40 CFR Part 52

[A-2-FRL 1677-1]

Air Pollution Control: Recommendation for Alternative Emission Reduction Options Within State Implementation Plans; Proposed Revision to the New Jersey State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and amendment to policy statement.

SUMMARY: EPA proposes to conditionally approve Subsection (c)(4) and (c)(5) of New Jersey Administrative Code (N.J.A.C.) 7-27-16.6, which contain provisions for "bubbles" involving multiple sources of volatile organic compounds (VOCs) emissions. EPA proposes not to require that each bubble adopted under these sections be submitted as a SIP revision, on the

grounds that such VOC bubbles do not involve action by the state requiring EPA approval.

EPA is proposing in this same notice to amend its "bubble" policy to permit VOC sources to adopt bubbles involving emission points in more than one Control Technology Guideline category (CTG), as well as to offer other states with bubble rules like New Jersey's the opportunity in some circumstances to avoid the need for each bubble to be approved as a SIP revision.

DATES: Comments must be submitted on or before December 24, 1980.

ADDRESS: All comments should be addressed to: Richard G. Rhoads, Control Programs Development Division (MD-15), Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711.

FOR FURTHER INFORMATION CONTACT:

William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278. (212) 264-2517.

SUPPLEMENTARY INFORMATION:

I. The EPA Bubble Policy.

On December 11, 1979, EPA published its bubble policy. 44 FR 71779. In that policy, EPA set out criteria for permitting sources to have adopted into the State Implementation Plan (SIP) alternative, more cost-effective emission limits to those previously specified in an existing SIP. These criteria included a statement that each bubble had to be submitted as a SIP revision. 44 FR 71782. In addition, the policy noted that for sources located in ozone nonattainment areas, where there is no plan demonstrating attainment of the ozone ambient air quality standard by the statutory deadlines, bubbles would only be allowed if they included emission points which are in the same category of sources of volatile organic compounds, (VOCs) defined by a Control Techniques Guideline (CTG).¹ The bubble policy also provided that emission points involved in a proposed bubble be in compliance with the SIP or on a compliance schedule in order to be able to use the bubble policy, and contained restrictions on certain types of trades among pollutants, such as prohibiting trading increased toxic hydrocarbon emissions against decreases in nontoxic hydrocarbon emissions. See generally 44 FR 71780-85.

¹ CTGs are issued by EPA to provide guidance to the states and sources regarding what constitutes Reasonably Available Control Technology (RACT) for control of VOCs. Each CTG covers a particular category of VOC sources.

II. The New Jersey Bubble Policy

EPA designated the entire state of New Jersey as nonattainment for ozone. See 45 FR 15531. New Jersey was therefore required to submit an implementation plan for ozone meeting the requirements of Part D of the Act. It submitted such a plan on December 29, 1978. 45 FR 15531. As part of this plan, New Jersey included regulations setting out requirements for reasonably available control technology (RACT) at existing stationary sources of volatile organic compounds (VOCs). These regulations, codified of Section 7:27-16 of the New Jersey Administrative Code, specified certain control measures for certain designated categories of sources, Sections 7:27-16.2 through 7:27-16.5; and established maximum allowable emission rates for most other VOC sources. Section 7:27-16.6. The emission rates were specified on an emission point-by-emission point basis. Section 7:27-16.6(c)(1) of the New Jersey Administrative Code.

New Jersey also adopted a "bubble" provision, Sections 7:27-16.6(c)(4) and (5). These sections allow sources with many emission points to seek state approval of different emission limits for each emission point provided that the sum of the emission rates does not exceed the sum of the rates specified by Sections 7:27-16.5(a), 16.6(a), and 16.6(b). In addition, sources must meet the requirements of Section 7:27-16.6(c)(5), which largely track the criteria laid out in EPA's bubble policy. However, New Jersey's bubble provision does not commit the state to submit each change in specific emission limits (or bubble) to EPA for approval as a SIP revision. In addition, the New Jersey rules do not require emission points involved in a proposed bubble to be in compliance with the SIP, or on a compliance schedule, in order to be allowed to use the bubble approach. Finally, New Jersey permits bubbles when the emission points involved may be in different CTG categories or in categories of sources for which a CTG has not yet been issued.²

III. EPA's March 11, 1980 Action On the New Jersey Bubble Rules

On March 11, 1980 EPA conditionally approved the New Jersey SIP revision as meeting the requirements of Part D of the Act. 45 FR 15531. However, EPA took no action with regard to the New Jersey bubble rules (Sections 7:27-16.6(c)(4) and (5) of the New Jersey Administrative Code), thus omitting

these rules from the federally-approved SIP. The basic reason for EPA's action was that the New Jersey rules did not provide for submission of each bubble to EPA as a SIP revision. For this reason EPA stated:

Finally, as pointed out in EPA's notice of proposed rulemaking, Subsections (c)(4) and (c)(5) of N.J.A.C. 7-27-16.6 contain provisions for "bubbling" multiple emission sources. In today's notice EPA is taking no action with regard to these two subsections since individual State applications of New Jersey's "bubble policy" provisions will be submitted to EPA as revisions to the New Jersey SIP. These revisions will be judged by EPA against its criteria contained in "Recommendations for Alternative Emission Reduction Options Within State Implementation Plans; Policy Statement" published on December 11, 1979 at 44 FR 71780.

45 FR 15540 (March 11, 1980).

IV. Today's Proposed Action

As noted above, EPA did not take action on the New Jersey bubble rules when it approved the state's Part D SIP. However, after further evaluation of those rules, EPA has decided that they can be approved, provided that the bubble rules are amended to meet the following conditions³ on or before July 1, 1981:

1. The bubble rules must provide that only emission points in compliance with the SIP or on a compliance schedule may use the bubble.
2. New Jersey must provide an adequate opportunity for public notice and comment on each alternative set of emission limitations developed under its bubble program.
3. New Jersey must require sources using the program to provide to EPA a written acknowledgment that the alternative limits are enforceable by EPA and may be enforced pursuant to Section 304(a) of the Clean Air Act. Such acknowledgement shall also bind the source owner's successors.
4. New Jersey must promptly transmit to EPA copies of each alternative set of emission limitations when they are proposed by the source owner and when they are adopted pursuant to the bubble rules, and, if EPA requests, additional supporting documents.

EPA further proposed to adopt the following procedure: EPA may participate in the state's notice and comment procedures on the alternative limitations. In addition, EPA may object in writing to the alternative limitations within 30 days of receipt after they have been adopted by the state. EPA may

only object if the alternative set of limitations violates one or more specific provisions of the SIP (including those proposed to be incorporated in 40 CFR 52.1582(d)). If EPA does object to the alternative limitations, the state will have an opportunity to correct the deficiencies. If they are not corrected, then EPA will consider the *original* SIP emission limits to remain enforceable. If the state does submit the corrections, EPA again will have 30 days in which to object to them in writing. If EPA does not object within the stated time limits, then the new emission limits will be deemed enforceable in lieu of the old ones.

Finally, as a further condition of approval, EPA proposes that New Jersey must commit to following the four conditions set out above until such time as its rules are formally amended and approved by EPA as meeting the conditions. This will enable New Jersey to use its bubble rules during the period between final EPA conditional approval and the state's amendment of its rules, without the need for each bubble to be submitted as a SIP revision.

V. Rationale

A. Need for SIP revisions. EPA proposes not to require that alternative emission limitations adopted under New Jersey's VOC bubble rules be submitted for EPA approval as SIP revisions. New Jersey's VOC bubble rules are tightly drawn and basically require only that the state perform the essentially mechanical task of adding up the new emission limits and determining whether that sum equals the sum of the limitations imposed by the SIP. The rules are sufficiently circumscribed and contain adequate safeguards to provide firm assurance that their use *cannot* interfere with attainment and maintenance of ambient air quality standards. Therefore, EPA believes that it can make an exception to its general policy and approve the New Jersey VOC bubble program without requiring case-by-case SIP revisions.

EPA believes that its proposal fully comports with the Clean Air Act. The heart of the Act's program for control of air pollution is the SIP, which lays out the state's strategy for attaining and maintaining the national ambient air quality standards (NAAQS). These plans must meet the requirements of sections 110(a)(2) and, where applicable, 172 of the Act, including a demonstration of attainment and maintenance of the NAAQS; emission limitations on stationary sources; schedules and timetables for compliance with these limitations sufficient to ensure attainment and maintenance of

²Section 16.6(c)(5) also does not explicitly provide for public participation in the choice of alternative emission limits.

³For a further discussion of these conditions, see Part V of this notice.

NAAQS; and preconstruction review of new or modified stationary sources.

The states are meant to play the primary role in air pollution control. In particular, Congress intended that the states choose the strategies they believed would best meet their own particular needs, including any mix of emission limitations they felt were appropriate, provided that these strategies would attain and maintain the NAAQS. Congress also required that EPA review the state's strategy to assure its adequacy. EPA's role in this regard is one of oversight only: it must make sure that the state plan will work, but it may not tell the state which of the range of acceptable strategies to choose. That is, if the state is contemplating a choice between plan A and plan B, EPA must be sure that whatever option is submitted will work; but if both will work, then EPA cannot tell the state to choose A rather than B. In short, as the Supreme Court noted:

Thus, so long as the ultimate effect of a State's choice of emission limitations is compliance with the national standards for ambient air, the State is at liberty to adopt whatever mix of emission limitations it deems best suited to its particular situation (and) . . . under the Act's division of responsibilities . . . the Agency shall approve (the state's choices) if they satisfy . . . the requirements of section 110(a)(2).

Train v. NRDC, 421 U.S. 60, 79-80 (1975) (italics added).⁴

EPA believes that since the key underlying reason for EPA oversight is to ensure that state choices do not interfere with attainment and maintenance of standards, see *Train v. NRDC*, *supra*, 421 U.S. at 79, EPA review and prior approval of state choices is not necessary where state choices are sufficiently circumscribed and mechanical in operation that they could not interfere with attainment and maintenance. Where the SIP provides for mechanical procedures by which SIP emission limits are changed such that the new limits are the mathematical equivalent of the existing limits, and where such mathematical equivalency necessarily means that the impact on ambient air quality will be equivalent, EPA need not approve the state's decision. But where the change in the SIP involves choices by the state that are not similarly circumscribed and

mechanical in operation and where such choices would alter the ambient air quality impact, then EPA approval is necessary.⁵

New Jersey's VOC bubble rules fit into this exception to case-by-case EPA approval of SIP revisions. The state has demonstrated compliance with Part D in part by defining maximum emissions from each of certain categories of VOC emission points. The bubble rules then permit the owners of plants containing two or more emission points to rearrange the mix of emission limits with which they will comply within each plant so long as the total for the plant remains the same. Since, unlike some other pollutants, the effects of VOC emissions on concentrations of ozone are monitored and modeled on an areawide rather than a site-specific basis,⁶ all emissions of VOC within a broad geographic area are considered to be comparable, regardless of the precise location of the source, the height of the stack from which the VOC is released, the topography of the site of the source or other potentially complicating factors. Determining the equivalency of emissions of VOC within a plant is therefore essentially a matter of arithmetic. The state's task is basically to add up the source's choice of emission limits and compare that number to the total of the numbers it specified for the emission points in the plant in the SIP. If the totals are the same the trade is equivalent so far as ambient ozone levels are concerned.⁷

In sum, EPA finds that prior EPA approval of each VOC bubble adopted

under New Jersey's VOC bubble rules is unnecessary. For this reason, EPA proposes not to require each VOC bubble to be submitted as a SIP revision. EPA is prepared to adopt a similar approach for other states' VOC bubble programs, provided those programs include the kinds of protective restrictions utilized by New Jersey.

EPA solicits comment on whether it should broaden this exception to EPA's general policy concerning the need for bubbles to be treated individually as SIP revisions and whether other kinds of bubble rules could also be approved without requiring EPA approval of each bubble.

B. Bubbles Involving Sources Outside of CTG Categories. EPA proposes to approve the New Jersey bubble rules despite the fact that these rules allow sources to include emissions points which are in different CTG categories from one another or in a category for which a CTG has not yet been issued. This is a change to EPA's bubble policy, since New Jersey has not demonstrated attainment of the ozone NAAQS by the statutory deadlines.

EPA's general policy has been that bubbles should not be available where there is no approved attainment demonstration for the area in which the source proposing the bubble is located. There is one exception in the current bubble policy to this general prohibition, however. VOC sources may use the bubble if the emissions points involved are all in the same CTG category. 44 FR 71781.

Upon further reflection, EPA believes that bubble trades should also be allowed among emissions points in different CTG categories, provided that a CTG has been issued and RACT has been defined and approved by EPA for each category. The applicable reductions are already known in such a case, and so EPA can see no reason why sources should not be able to use the bubble policy in such circumstances. EPA therefore is proposing to modify this aspect of the bubble policy, and is proposing to allow New Jersey to apply its bubble program to emission points in different CTG categories.

In addition, EPA proposes not to restrict use of the bubble in New Jersey only to those emission points in categories for which a CTG has already been issued, so long as the state has an EPA-approved regulation which defines RACT for the relevant emission points. Section 16.6 of N.J.A.C. 7-27 imposes a requirement that all VOC sources in New Jersey (save for certain specified categories of sources for which a CTG has been issued) reduce their emissions by at least 85%, including sources with

⁵See Sections 110(a)(2), 110(a)(3), 110(i), *Train v. NRDC*, *supra*. As noted, Congress required EPA approval of changes to SIPs because it wanted EPA to ensure that such changes would not interfere with attainment and maintenance of the NAAQS. This can be particularly appropriate with regard to some bubbles, for while the bubble concept is simple in theory, it can in some cases be very complicated in practice. Bubbles involve a trade of increased controls at one emission point for lesser controls at another point. But the key to the bubble policy is that the trade must be equivalent in its effect on ambient air quality effect and not interfere with attainment and maintenance of ambient standards, see 44 FR 71782-84 (December 11, 1979); and such a demonstration can in some cases be quite complex and require the exercise of a significant degree of judgment. *Id.* This can be especially true if monitoring or modeling is needed to evaluate ambient impacts or if questions such as those related to stack heights are involved.

⁶This is due to the fact that areawide oxidant levels are dependent on overall area emissions, and so equal amounts of VOC emissions anywhere in the broad area of nonattainment are deemed equivalent in their ambient effect.

⁷In contrast to VOC emissions, the ambient effects of sulfur dioxide and particulate emissions are typically determined by detailed modeling and/or monitoring on a site-specific basis and are affected by such factors as source location, stack height, extent to which the stacks are separated, local topography, etc.

⁴The Clean Air Act also provides that states must include in their SIP procedures by which SIPs may be changed, when such changes may be necessary, section 110(a)(2)(H). In addition, states may of course change their SIPs whenever they feel this would be desirable so long as the SIP remains in compliance with the Act. EPA's role again is that it must assure that the changes meet the requirements of Section 110(a)(2). See Section 110(a)(3).

emission points for which no CTG is available.⁸ EPA believes that while future CTGS may require greater than 85% reductions, the New Jersey rule in this respect represents a sound current overall definition of RACT for these sources.⁹ Therefore, EPA proposes to approve the New Jersey rules even though they allow bubbles involving emission points which are not in categories of VOC sources for which a CTG has been issued.

C. Compliance status. EPA's bubble policy states that sources not in compliance with the SIP or on an EPA approved compliance schedule should not be permitted to use the bubble policy, for otherwise "consideration of alternative control strategies would only protract and confuse efforts to enforce the SIP." 44 FR 71781. However, this requirement only pertains to those emission points at the source which are involved in the proposed bubble. In addition, the source need demonstrate only that those points are in compliance (or on a compliance schedule) with respect to the particular pollutant involved in the bubble.¹⁰ The demonstration of compliance need not be any more elaborate than currently-required compliance demonstrations. See 45 FR 59877 (September 11, 1980).

New Jersey's bubble program does not appear to contain such a restriction. EPA proposes to approve the program on condition that this deficiency is remedied, and that until the deficiency is remedied, no bubble will be effective unless all emission points involved are in compliance with the SIP or on an EPA approved compliance schedule. However, EPA solicits comment on whether Section 16.6(f) of the N.J.A.C., which has already been approved by EPA, itself satisfied this condition.

D. Public participation. The Clean Air Act evidences a strong Congressional desire that there be an adequate opportunity for public notice and comment on actions taken with respect to submissions of or changes in SIPs. Sections 110(a)(2), 110(a)(2)(H),

110(a)(3); 172(b)(1); cf. Section 110(c)(1). In addition, public participation is required in all programs for issuing new source review permits. See, e.g., Section 165(a)(2), 40 CFR 51.18(h). New Jersey must provide such an opportunity, particularly in view of the fact that EPA will not be taking notice and comment on individual bubble applications. EPA will not specify detailed requirements in this regard, but is proposing to require only that New Jersey adopt a reasonable system for public notice and comment.¹¹ This is not a major deficiency, and EPA therefore proposes correction of the deficiency as a condition of its approval of the New Jersey bubble rules.

E. Enforceability. EPA believes that it can enforce alternative emission limitations adopted pursuant to carefully restricted EPA approved procedures like those adopted by New Jersey. Cf. 40 CFR 52.02(d), 52.23. This represents a change from EPA's flat statement in the bubble policy that "case-by-case SIP revisions are necessary for an alternative approach to be legally enforceable." 44 FR 71786. But one of EPA's underlying concerns remains the same, i.e., that some sources might nevertheless argue that the alternative limits themselves are not set out in the SIP and so EPA could not enforce them. While EPA does not agree with this interpretation of EPA's enforcement powers as applied to these circumstances, EPA believes it advisable to forestall the possibility of such claims. EPA therefore proposes to require sources to provide a written acknowledgement that the new emission limits adopted pursuant to New Jersey's bubble program are fully enforceable by EPA, and may be enforced by citizens under Section 304(a) of the Act.¹² In addition, EPA proposes to insert into its approval of the New Jersey rules a statement that these new emission limits are deemed part of the New Jersey SIP and so may be enforced by EPA and by citizen suit.¹³

F. Invalid Bubbles. A related issue concerns the possibility that a source will be permitted to use a bubble even though that bubble is not equivalent to the existing SIP limits or does not otherwise meet the requirements of Sections 16.6 (c)(4) and (5). Under EPA's existing policy, EPA would simply disapprove the bubble after its submittal

as a SIP revision as being inconsistent with the SIP and as interfering with attainment and maintenance of standards. But under today's proposal, the Agency will follow a different procedure.

Although EPA views as remote the possibility that such an invalid bubble will be approved by the state, such a situation needs to be addressed. More important, the invalid bubble, because it was issued in violation of the conditions of the bubble rule included in the SIP, would not itself be a valid part of the SIP and so would not displace the original SIP emission limitations as a matter of federal law. The source would therefore be liable for any violation of the original SIP emission limits. To avoid situations in which an error is only discovered through an enforcement action brought years after the bubble was approved and implemented, EPA believes a procedure is necessary to timely alert the source, and the state, to any such problems should they occur.

EPA proposes to adopt a procedure under which New Jersey must transmit to EPA a copy of each alternative set of control requirements proposed by the source.¹⁴ This material should be sent as soon as the state receives the proposal. The state must also submit any additional relevant material requested by EPA. EPA in turn may choose to participate in the state's notice and comment procedure on the proposal if it so desires. The state must then promptly transmit to EPA any alternative emission limits it finally adopts. If within 30 days of receipt of the adopted alternative emission limits EPA does not object in writing on the grounds that the alternative limits violate one or more specific provisions of the New Jersey SIP, then EPA will deem enforceable only the new (alternative) emission limits. If EPA does object to the bubble, then EPA will regard the original SIP limits as enforceable.¹⁵ Should EPA discover after the 30-day period has elapsed that the bubble was improper, it may issue a notice of deficiency regarding that bubble to the state; but until the deficiency is corrected, the new emission limits will remain in force.

This procedure imposes no significant added burden on New Jersey or sources using the bubble program. In fact, since a bubble which violates the SIP is void anyway, this procedure really operates to provide an early warning and a time limit for discovering such invalid

⁸ This section actually imposes a range of requirements, including reductions in emissions of 85% to 99.7%, as well as other control practices. The section contains limited exceptions for certain categories of sources.

⁹ EPA does not mean to imply that 85% reduction is a mandatory or absolute minimum for RACT, but only that by requiring such reductions New Jersey's rules represent RACT.

Of course, should future CTGs indicate that RACT probably does require greater than currently required reductions, the state must find those additional reductions, either from the sources covered by the CTG or from other sources.

¹⁰ Compliance or a compliance schedule would also have to be shown with respect to pollutants whose emissions are linked to emissions of the pollutant involved in the bubble.

¹¹ For example, New Jersey need not require a public hearing on each bubble.

¹² This acknowledgement will of course, not constitute a waiver as to any other issue, such as the source's right to contest a SIP requirement or to argue that it is in compliance, should EPA bring an enforcement action.

¹³ Such a statement, if formally added to Part 52, will represent a final, binding action by EPA.

¹⁴ Cf. 40 CFR 51.18.

¹⁵ The state may, of course, correct the deficiencies. EPA will have 30 days in which to object in writing to the corrections. If EPA does not object, then EPA will deem enforceable only the new emission limits.

bubbles, and so adds more certainty to the entire process. Given EPA's statutory duty to assure attainment and maintenance of NAAQS, EPA believes this procedure provides sufficient federal oversight without introducing any significant delays into the process.

G. Guidance for other states. EPA will consider approval of generic SIP revisions submitted by other states (or currently contained in state law, but not approved by EPA) if they are similar to New Jersey's bubble rules. These rules must apply only to VOC sources and provide that bubbles may be approved only if the new emission limits adopted pursuant to the bubble rules are the mathematical equivalent of the existing SIP limits.¹⁶ In addition, the state must provide an adequate opportunity for notice and comment and must commit to transmit copies of bubble applications and approved bubbles to EPA (as well as any additional relevant material which EPA may request). Third, the rules must include provisions by which sources acknowledge federal enforceability of the alternative emission limitations. Finally, the rules must generally conform to EPA's bubble policy (as modified by this proposal). This includes a requirement that all emission points involved in a bubble transaction be in compliance or on a compliance schedule in order to be able to use a bubble, and restrictions on trades of toxic hydrocarbons in a bubble. See generally 44 FR 71780-85 (December 11, 1979).

VI. Public Comment

Interested persons are invited to comment on any element of EPA's proposed action and on whether or not the proposed New Jersey Implementation plan revision meets Clean Air Act requirements. Comments received by December 24, 1980 will be considered in EPA's final decision. All comments received will be available for inspection at the Region II office of EPA at 26 Federal Plaza, Room 908, New York, New York 10007.

Note.—Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. I have reviewed this package and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice is issued as required by Section 110 of the Clean Air Act, as

¹⁶ New Jersey only allows individual plants to use its bubble policy. If states wish to allow multiplant VOC bubbles, EPA will evaluate whether such rules would be approvable.

amended, to advise the public that comments may be submitted on whether the proposed revision to the New Jersey State Implementation Plan should be approved, conditionally approved, or disapproved. (Sections 110, 172, and 301 of the Clean Air Act as amended (42 U.S.C. 7410, 7502 and 7601)).

November 17, 1980.

Douglas M. Costle,
Administrator.

EPA proposes to revise 40 CFR 52.1582(d) to read as follows:

§ 52.1582 Control strategy and regulations: Ozone (volatile organic substances) and carbon monoxide

(d) Subchapter 16 of the New Jersey Administrative Code, entitled "Control and Prohibition of Air Pollution by Volatile Organic Substances," N.J.A.C. 7:27-16.1 *et seq.* as submitted to EPA on October 19, 1979 by the New Jersey Department of Environmental Protection, is approved for the entire State of New Jersey, with the following exceptions:

(1) Subsections 16.6(c)(4) and 16.6(c)(5) are approved on the following conditions:

(i) On or before July 1, 1981 the state must amend Subsection 16.6(c)(5) to provide that the state may approve mathematical combining of source gases pursuant to subsection 16.6(c)(4) only if all emission points involved are in compliance with New Jersey's SIP or on an EPA approved compliance schedule;

(ii) On or before July 1, 1981, the state must amend subsection 16.6(c)(5) to require an adequate opportunity for public notice and comment on each use of Subsections 16.6(c)(4) and 16.6(c)(5);

(iii) On or before July 1, 1981 the state must require each source desiring to use Subsections 16.6(c)(4) and 16.6(c)(5) to provide EPA a written acknowledgment that the emission limitations developed pursuant to those subsections are fully enforceable by EPA as part of the applicable state implementation plan and may be enforced pursuant to Section 304(a) of the Clean Air Act. Such acknowledgment shall also bind the source owner's successors;

(iv) The State must follow the procedures set out in paragraph (d)(1)(i)-(iii) of this section until EPA approves the revisions to subsection 16.6(c)(5) required by these subsections;

(v) The state must promptly transmit to EPA a copy of each set of emission limits proposed by a source pursuant to subsections 16.6(c)(4) and 16.6(c)(5), as well as a copy of the final emission limits adopted by the state. In addition,

the state must transmit any relevant additional material EPA may request;

(2) With regard to emission limits adopted pursuant to subsections 16.6(c)(4) and (5), EPA shall have thirty (30) days from the date of receipt of the emission limits adopted by the state to object in writing to the emission limits. Should EPA object in writing to the emission limits in accordance with paragraphs (d)(2)(i) and (ii) of this section, and the state choose to correct the deficiencies, EPA will have thirty (30) days in which to object to the corrected submission;

(i) EPA shall furnish its objections in writing, setting forth the specific deficiencies in the emission limitations adopted pursuant to Subsections 16.6(c)(4) and 16.6(c)(5);

(ii) EPA shall object only if such emission limitations violate one or more specific provisions of the New Jersey SIP, including the provisions of this section;

(iii) EPA shall deem enforceable such emission limitations:

(a) If EPA has not objected to them in accordance with paragraphs (d)(2)(i) and (ii) of this section within 30 days of their receipt by EPA; or

(b) Where EPA has objected, if EPA does not object to the state's corrections to the deficiencies noted in EPA's written objection within 30 days of receipt of those corrections. If EPA does not timely object in accordance with paragraphs (d)(2)(i) and (ii) of this section to emission limits adopted pursuant to subsections 16.6(c)(4) and (5), the previous emission limitations contained in the SIP shall be deemed replaced by the new emission limitations and such previous limitations shall no longer be federally enforceable. If EPA timely objects in accordance with paragraphs (d)(2)(i) and (ii) of this section to emission limits purportedly adopted pursuant to subsections 16.6(c)(4) and (5), the applicable emission limitations set out elsewhere in the New Jersey SIP shall be deemed still in force and fully enforceable by EPA;

(3) Emission limitations adopted under subsections 16.6(c)(4) and (5) and not objected to by EPA in accordance with 40 CFR 52.1582(d)(2) are deemed part of the New Jersey SIP and shall be enforceable by EPA and by citizens in the same manner as other requirements of the SIP;

(4) Although EPA approves the variance provisions in subchapter 7:27-16.9 and 7:27-16.10, in order to be considered as part of the SIP, each variance issued under these provisions

must be submitted to and approved by EPA as a SIP revision.

[FR Doc. 80-36551 Filed 11-21-80; 8:45 am]

BILLING CODE 6560-26-M

40 CFR Part 52

[A-9-FRL 1680-2]

Approval and Promulgation of Implementation Plans; Ambient Air Quality Surveillance Provisions for Arizona, California, Hawaii, and Nevada

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: On May 10, 1979, EPA promulgated Ambient Air Quality Monitoring, Data Reporting, and Surveillance Provisions. That action revoked the requirements for air quality monitoring in Part 51 of Title 40 of the Code of Federal Regulations and established a new Part 58 entitled Ambient Air Quality Surveillance. Those regulations satisfy the requirements of Section 110(a)(2)(C) of the Clean Air Act (the Act) by requiring ambient air quality monitoring and data reporting for purposes of State Implementation Plans (SIP).

Additionally requirements of Sections 319, 313, and 127 of the Act are satisfied.

Revisions to the Arizona, California, Hawaii, and Nevada SIPs have been submitted to EPA in order to meet the requirements of this new Part 58. This Notice discusses the States' submittals and EPA's proposed approval action.

DATES: Comments may be submitted up to January 23, 1981.

ADDRESSES: Comments may be sent to: Acting Regional Administrator, Attn: Air and Hazardous Materials Division, Air Technical Branch, Regulatory Section (A-4-2), Environmental Protection Agency, 215 Fremont Street, San Francisco CA 94105.

Copies of the revisions and the evaluation reports are available for public inspection during normal business hours at the EPA Region IX Library at the above address and at the following locations:

Arizona Department of Health Services, 1740 West Adams Street, Phoenix AZ 85007

California Air Resources Board, 1102 "Q" Street, Sacramento CA 95812
Environmental Protection and Health Services Division, Hawaii State Department of Health, 1250 Punchbowl Street, Honolulu HI 96813

Department of Conservation and Natural Resources, 201 South Fall Street, Carson City, NV 89710

Public Information Reference Unit, Room 2404 (EPA Library), 401 "M" Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Douglas Grano, Chief, Regulatory Section, Air and Hazardous Materials Division, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco CA 94105, (415) 556-2938.

SUPPLEMENTARY INFORMATION: On May 10, 1979 (44 FR 27558) pursuant to the requirements of Sections 110(a)(2)(c), 319, 313, and 127 of the Act, EPA promulgated Ambient Air Quality Monitoring, Data Reporting and Surveillance Provisions, revoking Part 51 and establishing a new Part 58 entitled Ambient Air Quality Surveillance.

As required by subpart C, 58.20 "the State shall adopt and submit to the Administrator a revision to the plan which will:

(a) Provide for the establishment of an air quality surveillance system that consists of a network of monitoring stations designated as State and Local Air Monitoring Stations (SLAMS) which measure ambient concentrations of those pollutants for which standards have been established in 40 CFR Part 50.

(b) Provide for meeting the requirements for Appendices A, C, D, and E to this part.

(c) Provide for the operation of at least one SLAMS per pollutant during any stage of an air pollution episode as defined in the contingency plan.

(d) Provide for the review of the air quality surveillance system on an annual basis to determine if the system meets the monitoring objectives defined in Appendix D to this part. Such review must identify needed modifications to the network such as termination or relocations of unnecessary stations or establishment of new stations which are necessary.

(e) Provide for having a SLAMS network description available for public inspection and submission to the Administrator upon request. The network description must be available at the time of plan revision submittal and must contain the following information for each SLAMS:

(1) The Storage and Retrieval of Aerometric DATA (SAROAD) site identification form for existing stations.

(2) The proposed location for scheduled stations.

(3) The sampling and analysis method.

(4) The operating schedule.

(5) The monitoring objective and spatial scale of representativeness as defined in Appendix D to this part.

(6) A schedule for:

(i) Locating, placing into operation, and making available the SAROAD site

identification form for each SLAMS which is not located and operating at the time of plan revision submittal;

(ii) Implementing quality assurance procedures of Appendix A to this part for each SLAMS for which such procedures are not implemented at the time of plan revision submittal; and

(iii) Re-siting each SLAMS which does not meet the requirements of Appendix E to this part at the time of plan revision submittal."

The number and locations of SLAMS were jointly determined by the States of Arizona, California, Hawaii, Nevada and the Regional Office. Stations are located in all areas where each state and EPA decided they are necessary to determine:

(1) Highest concentrations expected to occur in the area covered by the network;

(2) Representative concentrations in areas of high population density;

(3) The impact of significant sources or source categories on ambient pollution levels; and

(4) General Background concentration.

The States in Region IX will operate the SLAMS network in accordance with the Quality Assurance Procedures described in Appendix A to 40 CFR Part 58 and will submit a written Quality Assurance Program to the Regional Office. Some SLAMS will be designated as episode monitoring sites for declaring and monitoring episodes for CO, SO₂, NO₂, O₃, and total suspended particulate matter.

Each State provides for a special purpose monitoring system (SPMS) to supplement the SLAMS monitoring network. The SPMS stations will be used for determining areas where permanent SLAMS need to be located, determining the effect of point sources, research, determining acceptable growth patterns, and to provide a better understanding of air pollution in each State and the effects of air pollution on the public's health.

Each State's submittal establishes an ambient air monitoring network for "Criteria Pollutants" (SLAMS) meeting Appendices A, C, D, and E, establishes episode monitoring stations, and provides for a network description and an annual SLAMS review.

EPA finds the States' submittals meet the applicable regulations and is therefore, proposing approval of the comprehensive air quality monitoring networks.

The Administrator's decision to approve or disapprove the proposed revisions will be based on the comments received, and on a determination whether they meet the requirements of Sections 110(a)(2)(C), 319, 313, and 127

of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 58.

EPA has determined that this action is "specialized" and therefore, not subject to the procedural requirements of Executive Order 12044.

(Secs. 110, 301(a), Clean Air Act as amended (42 U.S.C. 7410, 7601(a))

Dated: November 13, 1980.

Sheila M. Prindivilla,

Acting Regional Administrator.

[FR Doc. 80-36563 Filed 11-21-80; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

[A-5-FRL 1679-6]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: U.S. EPA proposes to approve a revision to the Federally promulgated Ohio State Implementation Plan for sulfur dioxide as it applies to the B.F. Goodrich Company in Lorain County. This revision increases the allowable sulfur dioxide emissions from the Company's two coal-fired boilers and reduces the allowable emissions from its four oil-fired boilers. This revision will not jeopardize the attainment and maintenance of the National Ambient Air Quality Standards.

DATE: Comments on this proposed action must be received on or before December 24, 1980. Requests for a public hearing must be received no later than December 9, 1980.

ADDRESSES: Comments and requests for a hearing should be submitted to Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

The docket (# 5A-80-12) for this revision is available for inspection and copying during normal business hours at the above address and at the Central Docket Section, West Tower Lobby, Gallery 1, USEPA, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air Program Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6039.

SUPPLEMENTARY INFORMATION: On August 27, 1976, the U.S. Environmental Protection Agency (USEPA) promulgated regulations establishing the State Implementation Plan (SIP) for the control of sulfur dioxide for the State of

Ohio (41 FR 36324). This proposed rule would amend that SIP as it applies to the B.F. Goodrich Company in Lorain County.

On July 24, 1979, B.F. Goodrich submitted a SIP revision request for its facility in Lorain County. Additional information was submitted on March 14, 1980 and May 15, 1980. B.F. Goodrich's Lorain County facility uses steam provided by two coal-fired boilers and four oil-fired boilers. The submissions request a revision to the August 27, 1976 regulation that set boiler-specified limits according to a general county-wide equation that used the rated heat capacity of each boiler.

The B.F. Goodrich Company's SIP revision involves increasing the allowable emissions from the two coal-fired boilers and reducing the allowance emissions from the four oil-fired boilers. The revision will result in a decrease in both maximum allowable SO₂ emissions and actual SO₂ emissions in comparison with current emission levels in support of its proposed revision. B.F. Goodrich submitted a modeling analysis using the RAM urban model. The use of the urban model, however, was determined to be inappropriate. Recent USEPA final rulemaking (June 24, 1980, 45 FR 42279) for the Cleveland Electric Illuminating Company's (CEI) Avon Lake Plant, located 2 km. north of B.F. Goodrich, relied on modeling performed with USEPA's rural, single-source CRSTER model. Because both the CEI and the B.F. Goodrich plants are located close together, USEPA determined that it was appropriate to model both plants together with MPTER (the multi-source version of CRSTER).

A modeling analysis of B.F. Goodrich and CEI with MPTER was performed by USEPA. USEPA's analysis was based on meteorological data from 1973, 1976, and 1977 since the CEI analysis demonstrated that 1974 and 1975 meteorological data did not produce higher impacts in this area. Based on results from the CEI modeling, USEPA's analysis also assumed a 40 µg/m³ background level to account for non-inventoried, anthropogenic and natural sources.

USEPA's modeling analyzed B.F. Goodrich with the existing SIP emission limitations rather than with the proposed emission limitations. USEPA believes that if the existing control strategy is adequate to attain the NAAQS, then the proposed control strategy will also be adequate. Under both strategies, total allowable plant emissions remain nearly constant although the relationship between the amount of emissions and the height of the emissions differs. Under the

proposed control strategy, less emissions are allowed from the four shorter oil-fired boiler stacks (with heights of 18, 23, 23 and 46 meters) while greater emissions are allowed from the two taller coal-fired boiler stacks (both at 46 meters). Since the ground-level impact from a 46 meter stack will generally be less than the ground-level impact from a shorter stack (if all other stack exit and emission parameters are the same) USEPA believes that overall ground-level impacts will be less with the proposed strategy. USEPA ran the MPTER model for B.F. Goodrich and CEI Avon Lake with 1973, 1976, and 1977 Cleveland/Buffalo meteorological data. On the day of the highest, second high concentration, MPTER was rerun for only B.F. Goodrich to identify B.F. Goodrich's contribution to the impacts. The results were as follows:

(a) B.F. Goodrich impacts did not alter the constraining 3-hour concentration in the area. The 3-hour concentration which was equal to the secondary NAAQS of 1300 µg/m³, was dominated by emissions from CEI's Avon Lake Plant. Consequently, at the proposed limits, the 3-hour secondary standard will be protected with B.F. Goodrich at the proposed limits.

(b) B.F. Goodrich contributed significantly to the 24-hour concentrations in the area although these concentrations were also dominated by CEI's Avon Lake Plant. The 24-hour concentrations were, however, less than the primary SO₂ NAAQS of 365 µg/m³. Therefore, the 24-hour primary standard will be protected with B.F. Goodrich at the proposed limits.

(c) No annual modeling was performed since all previous analyses in this area indicate that the short-term standards are constraining. Since the analysis demonstrated that the short-term standards will be attained with the proposed emission limitations, the annual primary standard will also be protected.

USEPA also reviewed the proposed emission limitations considering various emission limitations for CEI. In its June 24, 1980 rulemaking on CEI (45 FR 42279), USEPA established two sets of emission limitations for CEI and required a fluid modeling study which may ultimately result in a third set of emission limitations. The two emission limitations were based on attainment of the constraining 3-hour secondary standard. USEPA believes that any emission limitation resulting from the fluid modeling study will also be based on the 3-hour standard. As discussed above, B.F. Goodrich does not contribute to the constraining 3-hour values.

Consequently, the applicable CEI emission limitations are not critical. Any changes in the CEI limits resulting from the fluid modeling study will not affect the revised limits for B.F. Goodrich.

Based upon the Agency's review and analysis of the SIP revision request, USEPA has determined that approval of the proposed SIP will not jeopardize the attainment and maintenance of the NAAQS. Therefore, USEPA proposes to approve the revised emission limitations for the B.F. Goodrich Company in Lorain County.

Final promulgation of this revision will follow an analysis of any public comments submitted.

Note.—Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels these other regulations "specialized". I have reviewed this proposed regulation pursuant to the guidance in USEPA's response to Executive Order 12044, "Improving Environmental Regulations," signed March 29, 1979 by the Administrator and I have determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart KK—Ohio

1. Section 52.1881 is amended by adding a new paragraph (b)(38)(ix) as follows:

§ 52.1881 Control Strategy: Sulfur oxides (sulfur dioxide).

(b) *Regulations for the control of sulfur dioxide in the State of Ohio.* * * *

(38) *In Lorain County* * * *

(ix) The B.F. Goodrich Company or any subsequent owner or operator of the facility in Lorain County, Ohio shall not cause or permit the emission of sulfur dioxide from any stack in excess of the rates specified below:

(A) 0.30 pound of sulfur dioxide per million BTU of actual heat input for oil-fired boilers number 1, 2, 5, and 6.

(B) 5.20 pound of sulfur dioxide per million BTU of actual heat input for coal fired boilers number 3 and 4.

(Sec. 110, Clean Air Act, as amended, (42 U.S.C. 7410))

Dated: October 31, 1980.

John McGuire,
Regional Administrator.

[FR Doc. 80-36564 Filed 11-21-80; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 261

[SWH-FRL 1679-3]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Reopening of Comment Period and Availability of Additional Information

AGENCY: Environmental Protection Agency.

ACTION: Re-opening of comment period on proposed hazardous waste listing and notice of availability of additional information.

SUMMARY: For the document concerning the reopening for sixty (60) days the deadline for comment on EPA's May 19, 1980, proposed hazardous waste listing under Section 3001 of the Resource Conservation and Recovery Act (RCRA), as amended, from the wood preserving industry, see a rule document issued in another section of today's **Federal Register**.

DATES: Comments on this additional information and on the revised listing background documents are due no later than January 23, 1981.

ADDRESSES: Comments should be addressed to Deborah Villari, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Comments should identify the regulatory docket number, "wood preserving—§ 3001."

Copies of the background document described in this notice are available for viewing at the EPA Public Information Reference Unit (Room 2404) and the RCRA Docket Room (Room 2711), both located at 401 M Street, SW., Washington, D.C. 20460, and at all EPA Regional Office libraries during the hours of 9:00 A.M. to 4:30 P.M., Mondays through Fridays.

FOR FURTHER INFORMATION CONTACT: Matthew A. Straus, Hazardous and Industrial Waste Division, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-9187.

Dated: November 18, 1980.

Eckardt C. Beck,
Assistant Administrator.

[FR Doc. 80-36545 Filed 11-21-80; 8:45 am]

BILLING CODE 6560-30-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 391, 392

[BMCS Docket No. MC-96; Notice No. 80-12]

Qualifications of Drivers and Driving of Motor Vehicles; Drugs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice solicits comments on a proposed revision to the rules prohibiting the use of drugs and other substances by interstate truck and bus drivers. The present Federal Motor Carrier Safety Regulations (FMCSR) name only categories of prohibited drugs and other substances. The proposed revision lists specific drugs and substances. Thus, the proposal would revise the present rules by increasing specificity through the addition of a table of disqualifying drugs and other substances.

DATE: Comments must be received on or before March 24, 1981.

ADDRESS: All comments should refer to the docket number and notice number that appear at the top of this document and must be submitted, preferably in triplicate, to the Federal Highway Administration, Bureau of Motor Carrier Safety, Room 3402, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald J. Davis, Bureau of Motor Carrier Safety (202) 426-9767; or Mrs. Kathleen S. Markman, Office of the Chief Counsel, (202) 426-0346, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The FMCSR's current drugs and other substances rules (§ 391.15(c)(2)(i) and (ii), § 391.41(b)(12), and § 392.4) address usage, possession, transportation of drugs and other substances, and driver disqualification as a result of criminal offenses or medical disqualification. The number of inquiries by motor carriers, drivers, and other interested parties for interpretations of these rules indicates that interest in drugs and other substances is widespread and on the increase. The Bureau of Motor Carrier Safety (BMCS) proposes to update its regulatory approach concerning prohibited substances by naming and classifying prohibited drugs and other substances. The BMCS would utilize the classification system presented in the Drug Enforcement Administration's

Comprehensive Drug Abuse Prevention and Control Act of 1970, (Pub. L. 91-513, October 27, 1970, 84 Stat. 1236) part of which is known as the Controlled Substances Act (CSA). The CSA would be the mechanism utilized to bring about a more comprehensive regulatory system which will provide clarification on whether a drug or other substance is prohibited. Also, the CSA is annually updated and lends itself to immediate decisionmaking by physicians, motor carriers, drivers, and BMCS personnel about the use, possession, transportation of, and driver disqualification regarding drugs and other substances in interstate or foreign commerce.

Background and Research

Most simply defined, a drug is a substance introduced into the body to alter the way the body functions. A drug's chemical makeup may be simple or complicated. A drug may be extracted from natural sources, such as plants, berries, or trees, and used in its original state or purified. Or it may be made synthetically in a laboratory.¹

A drug may affect a specific organ, such as the brain, or many organs. Physicians usually prescribe drugs in order to relieve pain or to obtain a few specific desired results. Sometimes a drug produces side effects that have nothing to do with the result one is trying to obtain. Side effects are usually not desirable.

The drugs discussed in this proposal have the power to change feelings, emotions, and sometimes behavior; they are psychoactive. Reactions to drugs depend on the dosage, the psychological and physiological makeup of the user, and how they are removed from the body.

With all of these influences playing a part, one can see why the same drug can affect two people differently or even the same person differently on different occasions. There are no simple cause-and-effect relationships between a drug and any behavior.

Abuse occurs when a drug is taken, usually by self-administration, in a way that departs from approved medical or social practice. The abuser takes the drug for pleasurable physical or emotional sensations, rather than for a medical reason. Sometimes the drug is taken in such large amounts that it cause physical and/or psychological damage, as well as unusual behavior.

All drugs mentioned in this proposal can create a state of dependence if

administered over a long enough period of time, and can result in the abuser experiencing a sense of need if deprived of the drug. The nature and strength of this sense of need changes with the kind and amount of drug abuse.

Physical dependence develops when the body becomes accustomed to a drug and, in some unknown way, requires it in order to continue functioning. If the drug is suddenly withdrawn, uncomfortable and even violent physical reactions may occur. Withdrawal symptoms give a rough measure of how serious a drug habit has become.

Psychological dependence develops when the drug is relied upon to give a pleasurable emotional effect. If withdrawn, the abuser experiences a strong emotional, rather than physical, craving for it. However, this type of dependence can be as compelling as a physical dependence.

The term addiction has been used to describe a state or strong physical dependence. However, its usage now includes psychological dependence since drug researchers now believe that anyone who becomes so physically or psychologically dependent on a drug that they cannot live usefully without it and whose entire life centers around drugs is an addict.

The condition physicians call tolerance occurs when greater and greater amounts of a drug are required to produce the same physical and psychological effects.

Some drugs produce tolerance, and physical and psychological dependence at the same time; others produce psychological dependence and tolerance only; still others lead to psychological craving alone. Drug authorities rate the psychological need for drugs as more complex and difficult to overcome than physical dependence.

Drugs have been employed to cure sickness and bring comfort since the earliest days of recorded history. Descriptions of drugs, as medicine, can be found in Chinese manuscripts 3,000 years old. The nonmedical use of drugs—for pleasure or to create a sense of religious joy and deeper self-understanding—is probably as old as life itself. Many of the drugs that are controversial today were known to ancient cultures, and sometimes were just as controversial.

The BMCS, in its continuous effort to keep pace with the current drug controversy has researched drug-related literature and has contacted various private and governmental sources to obtain additional information to provide a basis for rulemaking in this area. All contacts provided noteworthy material; however, the BMCS has determined that

the drug classification system, as set forth in the CSA, most efficiently leads itself to establishing a basis for rulemaking that can be used in regulating dangerous drugs and substances used by some commercial vehicle drivers.

The CSA's drug classification system is based on five groups and five schedules.² The placement of a drug in a group (narcotics, depressants, stimulants, hallucinogens, and cannabis) is based upon its biological and chemical composition, its accepted medical use in the United States, its overall effect upon the human body, and its potential for abuse. The drug groups are:

1. *Narcotics*. The term narcotic originally referred to a variety of substances including an altered state of consciousness. In current usage it means opium, its derivatives, or synthetic substitutes that produce tolerance and dependence, both psychological and physical.

Narcotics are especially useful in the practice of medicine for the relief of intense pain. They are the most effective analgesics known. They are also used as a cough suppressant and as a century old remedy for diarrhea.

Relief of physical or emotional suffering through the use of narcotics may result in a short-lived state of euphoria. They also tend to induce drowsiness, apathy, lethargy, decreased physical activity, constipation, pinpoint pupils, and reduced vision. Except in cases of acute intoxication, there is no slurred speech nor loss of motor coordination. Large doses may induce sleep, but there is a greater probability of nausea, vomiting, and respiratory depression.

The initial effects of narcotics are often unpleasant, leading many to conclude that those who persist in their use many have latent personality disturbances that antedate the physical and psychological dependency produced. To the extent that the response is felt to be pleasurable, its intensity may be expected to increase with the amount of the dose administered. Repeated use, however, will result in increasing tolerance so that the user must administer progressively larger doses to attain the desired effect, thereby reinforcing the compulsive behavior known as narcotics addiction.

Among the drugs belonging to this group are opium, heroin, morphine, codeine and methadone.

²U.S. Department of Justice, Drug Enforcement Administration. *Drug Enforcement* (Washington, D.C.: U.S. Government Printing Office, monthly issues of 2/79, 7/79, 10/79, and 3/80.)

¹Harvey R. Greenburg, M.D., "What You Should Know About Drugs and Drug Abuse" (New York: Four Winds Press, 1971), pp. 6-11.

2. *Depressants.* These substances have a potential for both physical and psychological dependence. Taken as prescribed by a physician, depressants can be beneficial in the symptomatic treatment of insomnia, relief of anxiety, irritability, and tension. In excessive amounts, however, they produce a state of intoxication that is remarkably similar to that of alcohol.

As with alcohol, these effects may vary not only from person-to-person, but from time-to-time in the same individual. Small doses produce mild sedation; larger doses may produce a temporary state of euphoria, mood depression and apathy. Intoxicating doses invariably result in impaired judgement, slurred speech, and an often unrealized loss of motor coordination and response time, which is critical to the safe operation of a motor vehicle. Depressants may also induce drowsiness, sleep, stupor, coma, and death. The danger of depressants multiplies when used in combination with other drugs or alcohol.

In addition to the dangers of disorientation which can result in accidents on the highway, habitual users incur increased long-term risk. Tolerance to depressants develops rapidly, extending the intake capacity while narrowing the range between an intoxicating and lethal dose. The person who is unaware of the dangers of increasing dependence will often seek prescriptions from several physicians concurrently, increasing the dose up to 10 to 20 times the recommended amount.

Anyone who ceases to take or abruptly curtails the amount of a depressant on which he/she has become dependent will encounter severe symptoms of withdrawal. If the individual is dependent on a large amount of the drug, delirium, psychotic behavior, convulsions, or death may occur.

Among the depressants that most commonly give rise to the general conditions described above are chloral hydrate, barbiturates, glutethimide, methaqualone, the benzodiazepines, and meprobamate (tranquilizers). The most common legal tranquilizer prescribed is valium.

3. *Stimulants.* This group includes drugs which act directly on the central nervous system. These "speed up" drugs are used to relieve fatigue, lethargy, and to counteract chronic depression.

The oral consumption of stimulants may result in a temporary sense of exhilaration, superabundant energy, hyperactivity, dilated pupils, increased pulse rate, increased blood pressure, loss of appetite and extended wakefulness. It may also induce irritability, anxiety and apprehension.

These effects are greatly intensified with administration by intravenous injection which may produce a sudden sensation known as a "flash" or "rush." The protracted use of stimulants is followed, however, by a period of depression known as "crashing" that is invariably described as unpleasant. Since the depression can be easily counteracted by another injection of a stimulant, this abuse pattern becomes increasingly difficult to break. Heavy users may inject themselves every few hours. The process sometimes continues to the point of delirium, psychosis, or physical exhaustion.

Tolerance develops rapidly, increasing the probability of overdose. Larger doses also result in various mental aberrations, the early signs of which include repetitive grinding of the teeth, touching and picking the face and extremities, performing the same task over and over, a preoccupation with one's own thought processes, suspiciousness, and a feeling of being watched. Paranoia with auditory and visual hallucinations characterize the toxic syndrome resulting from continued high doses. Dizziness, tremor, agitation, hostility, panic, headaches, flushed skin, chest pain with palpitations, excessive sweating, vomiting, and abdominal cramps are among the symptoms of a sublethal overdose. In the absence of medical intervention, high fever, convulsions, and cardiovascular collapse may precede the onset of death.

Since death is due in part to the consequences of a marked increase in body temperature, it should be noted that physical exertion and environmental temperature may greatly increase the hazards of stimulant use. Fatalities under conditions of extreme exertion have been reported among athletes who have taken stimulants in moderate amounts.

Whether these drugs produce physical dependence is still open to question. There can be no doubt that the chronic high dose users do not easily or soon return to normal if withdrawn from stimulants. Profound apathy and depression, fatigue, and disturbed sleep, up to 20 hours a day, which can last for several days, characterize the immediate withdrawal syndrome. A lingering impairment of perception and thought processes may also be present. So strong is the psychological dependence produced by the sustained use of stimulants that anxiety, an incapacitating tenseness, and suicidal tendencies may persist for weeks or months.

Among the drugs found to be classified as stimulants are the amphetamines, cocaine, phenmetrazine

(preludin), and methylphenidate (ritalin). Under the CSA, cocaine is designated a narcotic.

4. *Hallucinogens.* The hallucinogenic drugs are substances, both natural and synthetic, that distort the perception of objective reality. They produce sensory illusions making it difficult to distinguish between fact and fantasy. If taken in large doses, they cause hallucinations, the apparent perception of unreal sights and sounds.

Under the influence of hallucinogens, a user may speak of "seeing" sounds and "hearing" colors. The senses of direction, distance, and time become disoriented. Restlessness and sleeplessness are common until the drug wears off. The greatest hazard of the hallucinogens is that their effects are unpredictable each time they are taken. Mood and expectation are primary determinants in the character of the experience. Latent psychoses are easily unleashed when a user is in a hallucinogenic state. Other deep seated emotional problems surface that otherwise would not come to life. Toxic reactions may precipitate psychotic reactions and even death can occur. Persons in hallucinogenic states should be closely supervised and upset as little as possible to keep them from harming themselves and others.

Among the drugs included in this group are lysergic acid diethylamide (LSD), phencyclidine (PCP), psilocybin-psilocin, and mescaline. Under the CSA, PCP is designated a depressant.

5. *Cannabis.* this plant, grown extensively in Central and South America, Africa, India, and the Middle East, has been cultivated for centuries for the hemp fibers of the stem, for the seeds which are used in feed mixtures, and for the oil as an ingredient of paint. Also, it is grown for biologically active substances contained in its leaves and flowers.

As a psychoactive drug, cannabis is usually smoked in the form of loosely rolled cigarettes (joints), although it may also be taken orally. It may be smoked alone or in combination with other plant materials. Low doses tend to produce initial restlessness and an increased sense of well-being, followed by a dreamy, carefree state of relaxation; alteration of sensory perceptions, including an illusory expansion of time and space; a more vivid sense of touch, sight, smell, taste, and sound; hunger, especially a craving for sweets; and subtle changes in thought formation and expression. Moderate doses may result in a state of intoxication that intensifies these reactions. The individual may experience rapidly changing emotions, shifting sensory imagery, a flight of

fragmentary thoughts with disturbed associations, a dulling of attention, and impaired memory, accompanied by an altered sense of self-identity and commonly a sense of enhanced insight. High doses may result in distortions of body image, loss of personal identity, fantasies, and hallucinations. Very high doses may precipitate a toxic psychosis (i.e., temporary drug-induced brain malfunction). Drugs included in this group are marijuana, hashish, and hashish oil.

As mentioned earlier, the drug classification system used in the CSA has five schedules. Schedule I drugs and other substances are the most controlled (they have the highest abuse potential) and Schedule V are the least controlled. Section 202(b) of the CSA sets forth the findings which must be made in order to place a substance in any of the five schedules. The findings are as follows:

Schedule I

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has no current accepted medical use in treatment in the United States.

(C) There is a lack of accepted safety for use of the drug or other substances under medical supervision.

Schedule II

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.

(C) Abuse of the drug or other substances may lead to severe psychological or physical dependence.

Schedule III

(A) The drug or other substance has a potential for abuse less than the drugs or other substances in Schedules I and II.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to moderate or low psychological dependence or high psychological dependence.

Schedule IV

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in Schedule III.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical

dependence or psychological dependence relative to the drugs or other substances in Schedule III.

Schedule V

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in Schedule IV.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule IV.

The key criteria and the ones used most often in making these findings are the substance's potential for abuse, and its psychological and physical dependence.

Proposed Revision and Addition

In view of the information presented and the current nationwide drug controversy, the Federal Highway Administration proposes to revise the present drug regulations (§ 391.15(c)(1) and (2)(8), (ii) and (iii); § 391.41(b)(12); and § 392.4), and to add a table of disqualifying Drugs and Other Substances as Appendix D in the FMCSR.

This table shall consist of the drugs and other substances, by official, common or usual, chemical, generic, or brand name designated for manufacturing and distribution. All drugs or other substances found in this table have been evaluated in accordance with the following criteria:³

(1) The risk, if any, to the public while under the influence of the drug or other substance;

(2) The state and availability of current scientific knowledge regarding the drug or other substance;

(3) Scientific evidence of the drug's or other substance's pharmacological effect, if known;

(4) The drug's or other substance's accepted medical use, if any, in treatment in the United States; and

(5) The drug's or other substance's actual or relative potential for abuse.

The influence of drugs or other substances upon motor vehicle driving abilities is a significant factor in the human performance element of motor vehicle safety. Quick reactions and good judgment are required for the operation

of motor vehicles, and there is little doubt that impaired reaction time and poor judgment, added to faulty attitudes, emotional disturbances, and physical disabilities are basically responsible for many, if not most, accidents. Thus, one of the key factors to reducing accidents is the overall state of the driver's mental and physical health.

Several groups of drugs are known to affect a driver's overall state of mental and physical health, which in one manner or another impairs driving ability. The more important groups have been discussed.

The revision of the FMCSR and the addition of the table will classify drugs and other substances in schedules as used in the CSA. A driver who is convicted of a crime involving the transportation, possession, or use of a Schedule I, II, III, IV, or V drug or other substance identified in the table would be disqualified for 1 year. Any Schedule I or II drug or other substance prescribed by a physician would make a driver medically unqualified to drive while using the medication. Use of Schedule III, IV, or V drugs or other substances would be cause for a driver to be found medically unqualified, if the prescribing physician cannot attest to their safety when the driver is operating a motor vehicle. The prescribing medical practitioner's criteria for judging a Schedule III, IV, or V drug or other substance would be located in Appendix D of the FMCSR.

The word "knowing" is being removed from § 391.15(c)(2)(ii) because it has created confusion about interpretation. The removal of the word clarifies that it is the intent of the regulation to disqualify anyone who has been convicted of a criminal offense described. The fact that the offense is a crime is sufficient to establish that the act was knowingly committed.

At present in § 391.41(c)(2), disqualifying drug and alcohol offenses must have been committed while operating a motor vehicle. In the revision, this requirement is changed to offenses committed while the driver is on duty. The change reflects the fact that the effects of alcohol and drugs usually continue to have an impact during the entire on-duty time. Also, a driver's nondriving on-duty period could affect safety on the highway once driving takes place. An example is pre-trip inspection and loading. A driver performing these tasks with less than normal attention could easily miss a vehicle defect or improperly load a vehicle, either of which could result in an increased probability of an accident later when driving.

³ The method and classification system employed in controlling the manufacture, distribution, and medical use of the drug or other substance is set forth by the United States Department of Justice, Drug Enforcement Administration and the Department of Health and Human Services, Food and Drug Administration.

Comments will be available for examination by any interested person in the docket room of the Bureau of Motor Carrier Safety, Room 3402, 400 Seventh Street, SW., Washington, D.C., both before and after the closing date for comments.

Note.—The Federal Highway Administration has determined that this document does not contain a significant proposal according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. A draft regulatory evaluation is available for inspection in the public docket and may be obtained by contacting Mr. Gerald J. Davis of the program office at the address specified above.

(49 U.S.C. 304, 49 U.S.C. 1655, 49 CFR 1.48(h) and 301.60)

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: November 17, 1980.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety.

Therefore, in consideration of the foregoing, it is proposed to amend Subchapter B, Chapter III, of Title 49, Code of Federal Regulations as set forth below:

PART 391—QUALIFICATIONS OF DRIVERS

1. Section 391.15(c) (1) and (2) is revised to read as follows:

§ 391.15 Disqualification of drivers.

(c) *Disqualification for criminal misconduct.* (1) *General Rule.* A driver who is convicted of (or forfeits bond or collateral upon a charge of) a disqualifying offense specified in paragraph (c)(2) of this section is disqualified for the period of time specified in paragraph (c)(3) of this section, if the offense was committed during on-duty time as defined in § 395.2(a) of this subchapter.

(2) *Disqualifying offenses.* The following offenses are disqualifying offenses:

- (i) A driver who is on duty and under the influence of alcohol.
- (ii) A driver who is on duty and under the influence of a Schedule I, II, III, IV, or V drug or other substance identified in Appendix D to this subchapter.¹
- (iii) An offense involving the transportation, possession, or unlawful use of a disqualifying drug or other

substance identified in Appendix D of this subchapter.¹

(iv) Leaving the scene of an accident which resulted in personal injury or death.

(v) A felony involving the use of a motor vehicle.

2. Section 391.41(b)(12) is revised to read as follows:

§ 391.41 Physical qualifications for drivers.

(b) * * *

(12) Does not use a drug or other substance that is identified in Schedule I, II, III, IV, or V of Appendix D to this Subchapter.

Exception: Paragraph (b)(12) of this section does not apply to the use of a Schedule III, IV, or V drug or other substance that is prescribed by a medical practitioner¹ who has assessed the driver's reaction to it and judged the drug or other substance not to have an effect on the driver's ability to safely operate a motor vehicle.

PART 392—DRIVING OF MOTOR VEHICLES

3. The table of sections for Part 392, Subpart A is amended by changing the heading of § 392.4 to read "Drugs and other substances," and the section is revised to read as follows:

§ 392.4 Drugs and other substances.

(a) No driver shall be on duty and possess, be under the influence of, or use any drug or other substance identified in Appendix D to this chapter.

Exception: This paragraph does not apply to the use of a Schedule III, IV, or V drug or other substance that is prescribed by a medical practitioner who has assessed the driver's reaction to it and judged the drug or other substance not to have an effect on the driver's ability to safely operate a motor vehicle.

(b) No motor carrier shall require or permit a driver to violate paragraph (a) of this section.

(c) As used in this section, "possession" does not include possession of a substance which is manifested and transported as part of a shipment.

4. Subchapter B is amended by adding Appendix D as set forth below:

Appendix D—Table of Disqualifying Drugs and Other Substances

This drug classification system's schedules are adopted in whole from 21 CFR 1308, Schedules of Controlled Substances. The prohibitions of § 391.41(b)(12) and § 392.4(a) do not apply to drivers who possess, are under the influence of, or are using any Schedule III, IV, or V drug or other substances identified in Appendix D of this subchapter if a medical practitioner¹ has prescribed the drug and assessed its safety impact on the driver operating a motor vehicle. The information a driver must provide his/her motor carrier or special agent of the BMCS, upon request, to verify eligibility for the exception must minimally address the following: (1) the medical condition being treated; and (2) the drug(s) name, dosage, and length of treatment period; and include a statement that the medical practitioner has noted or observed the driver's reaction to the named drug treatment and it is the practitioner's medical opinion that the driver's reaction will not render the driver a safety risk in operating a motor vehicle.

Note.—The Controlled Substances Act (CSA) Schedules list drugs and other substances by their chemical name. Since most prescription drugs are labeled by product name, a second format of the CSA listing in which these drugs are listed by product name is included. This format is an adaptation of "Controlled Substances Inventory List" of the United States Department of Justice's Drug Enforcement Administration, as of January 1979. Schedule I drugs and other substances are not listed since they are not prescribed by treating physicians in the United States.

Schedule II drugs are presented alphabetically by product name. Schedule III, IV, and V drugs are combined into a single alphabetized list. This format is presented to more easily facilitate utilization of the CSA's schedules by nonmedical personnel.

Schedules

§ 1308.11 Schedule I.

(a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the DEA Controlled Substances Code Number set forth opposite it.

(b) *Opiates.* Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, salts is possible within the specific chemical designation:

(1) Acetylmethadol.....	9601
(2) Allylprodine.....	9602
(3) Alphacetylmethadol.....	9603
(4) Alphameprodine.....	9604

¹ "Medical practitioner" means a physician, dentist or other person licensed, registered, or otherwise permitted by the United States or the jurisdiction in which he/she practices to administer or prescribe a controlled substance in the course of professional medical service.

¹ Copies of this list of Dangerous Drugs and Other Substances may be obtained by writing to the Director, Bureau of Motor Carrier Safety, Washington, D.C. 20590, or to any Regional Motor Carrier Safety Office of the Federal Highway Administration at the address given in § 390.40 of this subchapter.

¹ "Medical practitioner" means a physician, dentist or other person licensed, registered, or otherwise permitted by the United States or the jurisdiction in which he/she practices to administer or prescribe a controlled substance in the course of professional medical service.

(5) Alphamethadol	9605
(6) Benzethidine	9606
(7) Betacetylmethadol	9607
(8) Betameprodine	9608
(9) Betamethadol	9609
(10) Betaprodine	9611
(11) Clonitazene	9612
(12) Dextromoramide	9613
(13) Diamprodine	9615
(14) Diethylthiambutene	9616
(15) Difenoazin	9168
(16) Dimenoxadol	9617
(17) Dimethopentanol	9618
(18) Dimethylthiambutene	9619
(19) Dioxaphetyl butyrate	9621
(20) Dipipanone	9622
(21) Ethylmethylthiambutene	9623
(22) Etomidate	9624
(23) Etoxinidine	9625
(24) Furethidine	9626
(25) Hydroxypethidine	9627
(26) Ketobemidone	9628
(27) Levomoramide	9629
(28) Levophenacetyl morphan	9631
(29) Morphinidine	9632
(30) Noracymethadol	9633
(31) Norlevorphanol	9634
(32) Normethadone	9635
(33) Norpipanone	9636
(34) Phenadoxone	9637
(35) Phenampromide	9638
(36) Phenomorphan	9647
(37) Phenopidine	9641
(38) Pirritamide	9642
(39) Proheptazine	9643
(40) Properidine	9644
(41) Propiram	9649
(42) Racemoramide	9645
(43) Trimeperidine	9646

(c) *Opium derivatives.* Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine	9319
(2) Acetyldihydrocodeine	9051
(3) Benzylmorphine	9052
(4) Codeine methylbromide	9070
(5) Codeine-N-Oxide	9053
(6) Cyrenorphine	9054
(7) Desomorphine	9055
(8) Dihydromorphine	9145
(9) Drotribanol	9335
(10) Etorphine (except hydrochloride salt)	9056
(11) Heroin	9200
(12) Hydromorphanol	9301
(13) Methyl desorphine	9302
(14) Methyl dihydromorphine	9304
(15) Morphine methylbromide	9305
(16) Morphine methylsulfonate	9306
(17) Morphine-N-Oxide	9307
(18) Myrophine	9308
(19) Nicocodine	9309
(20) Nicomorphine	9312
(21) Normorphine	9313
(22) Pholcodine	9314
(23) Thebacin	9315

(d) *Hallucinogenic substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

(1) 4-bromo-2,5-dimethoxy-amphetamine	7391
Some trade or other names: 4-bromo-2,5-dimethoxy- α -methylphenethylamine, 4-bromo-2,5-DMA.	

(2) 2,5-dimethoxyamphetamine	7396
Some trade or other names: 2,5-dimethoxy- α -methylphenethylamine, 2,5-DMA.	
(3) 4-methoxyamphetamine	7411
Some trade or other names: 4-methoxy- α -methylphenethylamine, paramethoxyamphetamine, PMA.	
(4) 5-methoxy-3,4-methylenedioxy-amphetamine	7401
(5) 4-methyl-2,5-dimethoxy-amphetamine	7395
Some trade and other names: 4-methyl-2,5-dimethoxy- α -methylphenethylamine; "DOM"; and "STP".	
(6) 3,4-methylenedioxy amphetamine	7400
(7) 3,4,5-trimethoxy amphetamine	7390
(8) Bufotenine	7433
Some trade and other names: 3-(β -Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine.	
(9) Diethyltryptamine	7434
Some trade and other names: N,N-Diethyltryptamine; DET.	
(10) Dimethyltryptamine	7435
Some trade or other names: DMT	
(11) Ibogaine	7260
Some trade and other names: 7-Ethyl-6,6 β ,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1'2':1,2] azepino [5,4-b] indole; Tabernanthe iboga.	
(12) Lysergic acid diethylamide	7315
(13) Marijuana	7360
(14) Mescaline	7381
(15) Peyote	7415
Meaning all parts of the plant presently classified botanically as <i>Lophophora williamsii</i> Le-maire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts (Interprets 21 USC 812(c), Schedule I(c) (12)).	
(16) N-ethyl-3-piperidyl benzilate	7482
(17) N-methyl-3-piperidyl benzilate	7484
(18) Psilocybin	7437
(19) Psilocyn	7438
(20) Tetrahydrocannabinols	7370

Synthetic equivalents of the substances contained in the plant, or in the resinous extracts of *Cannabis*, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

Δ^1 cis or trans tetrahydrocannabinol, and their optical isomers.	
Δ^6 cis or trans tetrahydrocannabinol, and their optical isomers.	
$\Delta^3,4$ cis or trans tetrahydrocannabinol, and its optical isomers.	
(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)	
(21) Ethylamine analog of phencyclidine	7455
Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, PCE.	
(22) Pyrrolidine analog of phencyclidine	7458
Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP.	
(23) Thiophene analog of phencyclidine	7470
Some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienyl-analog of phencyclidine, TPCP, TCP.	

(e) *Depressants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone	2572
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[39 FR 22141, June 20, 1974, as amended at 40 FR 19813, May 7, 1975; 40 FR 28611, July 8, 1975; 41 FR 4016, Jan. 28, 1976; 41 FR 43401,

Oct. 1, 1976; 42 FR 15679, Mar. 23, 1977; 43 FR 43295, Sept. 25, 1978]

§ 1308.12 Schedule II.

(a) Schedule II shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the Controlled Substances Code Number set forth opposite it.

(b) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrophan, nalbuphine, naloxone, and naltrexone, and their respective salts, but including the following:

1 Raw opium	9600
2 Opium extracts	9610
3 Opium fluid extracts	9620
4 Powdered opium	9639
5 Granulated opium	9640
6 Tincture of opium	9630
7 Codeine	9050
8 Ethylmorphine	9190
9 Etophine hydrochloride	9059
10 Hydrocodone	9193
11 Hydromorphone	9150
12 Metopon	9260
13 Morphine	9300
14 Oxycodone	9143
15 Oxymorphone	9652
16 Thebaine	9333

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (b)(1) of this section, except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves (9040) and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extraction do not contain cocaine (9041) or ecgonine (9180).

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy), 9670.

(c) Opiates. Unless specifically excepted or unless in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrophan excepted:

(1) Alphaprodine	9010
(2) Anileridine	9020
(3) Bezitramide	9800
(4) Dihydrocodeine	9120

(5) Diphenoxylate.....	9170
(6) Fentanyl.....	9801
(7) Isomethadone.....	9226
(8) Levomethorphan.....	9210
(9) Levorphanol.....	9220
(10) Metazocine.....	9240
(11) Methadone.....	9250
(12) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane.....	9254
(13) Moramide-Intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid.....	9802
(14) Pethidine (meperidine).....	9230
(15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.....	9232
(16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.....	9233
(17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.....	9234
(18) Phenazocine.....	9715
(19) Piminodine.....	9730
(20) Racemethorphan.....	9732
(21) Racemorphan.....	9733

(d) *Stimulants*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.....	1100
(2) Methamphetamine, its salts, isomers, and salts of its isomers.....	1105
(3) Phenmetrazine and its salts.....	1631
(4) Methylphenidate.....	1724

(e) *Depressants*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital.....	2125
(2) Methaqualone.....	2565
(3) Pentobarbital.....	2270
(4) Phencyclidine.....	7471
(5) Secobarbital.....	2315

(f) *Immediate precursors*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine:

(i) Phenylacetone—8501

Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone:

(2) Immediate precursors to phencyclidine (PCP):

(i) 1-phenylcyclohexylamine—7460

(ii) 1-piperidinocyclohexanecarbonitrile (PCC)—8603

[39 FR 22142, June 20, 1974, as amended at 40 FR 6780, Feb. 14, 1975; 40 FR 10456, Mar. 6, 1975; 41 FR 26568, June 28, 1976; 41 FR 43401, Oct. 1, 1976; 42 FR 15680, Mar. 23, 1977; 43 FR 21325, May 17, 1978; 44 FR 71823, Dec. 12, 1979]

§ 1308.13 Schedule III.

(a) Schedule III shall consist of the drugs and other substances, by whatever and other substances, by whatever official name, common or usual name, chemical name, or

brand name designated, listed in this section. Each drug or substance has been assigned the DEA Controlled Substances Code Number set forth opposite it.

(b) *Stimulants*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under § 308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances.....	1405
(2) Benzphetamine.....	1228
(3) Chlorphentermine.....	1645
(4) Clortermine.....	1647
(5) Mazindol.....	1605
(6) Phendimetrazine.....	1615

(c) *Depressants*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any compound, mixture or preparation containing:	
(i) Amobarbital.....	2125
(ii) Secobarbital.....	2315
(iii) Pentobarbital.....	2270
or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.	
(2) Any suppository dosage form containing:	
(i) Amobarbital.....	2125
(ii) Secobarbital.....	2315
(iii) Pentobarbital.....	2270
or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository.	
(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof.....	2100
(4) Chlorhexadol.....	2510
(5) Glutethimide.....	2550
(6) Lysergic acid.....	7300
(7) Lysergic acid amide.....	7310
(8) Methyprylon.....	2575
(9) Sulfondiethylmethane.....	2600
(10) Sulfonethylmethane.....	2605
(11) Sulfonmethane.....	2610

(d) Nalorphine 9400.

(e) *Narcotic Drugs*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1.8 grams of codeine per 100 milliliters of not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isquinoline alkaloid of opium.....	9803
(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.....	9804
(3) Not more than 300 milligrams of dihydrocodeine per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isquinoline alkaloid of opium.....	9805

(4) Not more than 300 milligrams of dihydrocodeine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.....	9806
(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.....	9807
(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.....	9808
(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.....	9809
(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.....	9810

[39 FR 22142, June 20, 1974, as amended at 41 FR 43401, Oct. 1, 1976; 43 FR 3359, Jan. 25, 1978; 44 FR 40888, July 13, 1979]

§ 1308.14 Schedule IV.

(a) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section. Each drug or substance has been assigned the DEA Controlled Substances Code Number set forth opposite it.

(b) *Narcotic drugs*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1 milligram of difenoxin (DEA Drug Code No. 9168) and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) *Depressants*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Barbitol.....	2145
(2) Chloral betaine.....	2460
(3) Chloral hydrate.....	2465
(4) Chlordiazepoxide.....	2744
(5) Clonazepam.....	2737
(6) Clorazepate.....	2768
(7) Diazepam.....	2765
(8) Ethchlorvynol.....	2540
(9) Ethinamate.....	2545
(10) Flurazepam.....	2767
(11) Lorazepam.....	2885
(12) Mebutamate.....	2800
(13) Meprobamate.....	2820
(14) Methohexital.....	2264
(15) Methylphenobarbital (mephobarbital).....	2250
(16) Oxazepam.....	2835
(17) Paraldehyde.....	2585
(18) Petrichoral.....	2591
(19) Phenobarbital.....	2285
(20) Prazepam.....	2764

(d) *Fenfluramine*. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such

salts, isomers, and salts of isomers is possible:

(1) Fenfluramine..... 1670

(e) *Stimulants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Diethylpropion..... 1610
(2) Phentermine..... 1640
(3) Pemoline (including organometallic complexes and chelates thereof)..... 1530

(f) *Other substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(1) Dextropropoxyphene (alpha - (+) - 4 - dimethylamino-1,2 - diphenyl - 3 - methyl - 2 - propionoxybutane)..... 8121
(2) Pentazocine..... 9709

(39 FR 22143, June 20, 1974; 40 FR 4150, Jan. 28, 1975, as amended at 40 FR 24001, June 4, 1975; 41 FR 43402, Oct. 1, 1976; 41 FR 55176, Dec. 17, 1976; 42 FR 8636, Feb. 11, 1977; 42 FR 54546, Oct. 7, 1977; 43 FR 38383, Aug. 28, 1978; 44 FR 2170, Jan. 10, 1979; 44 FR 40888, July 13, 1979)

§ 1308.15 Schedule V.

(a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(6) Not more than 0.5 milligram of difenoxin (DEA Drug Code No. 9168) and not less than

25 micrograms of atropine sulfate per dosage unit.

(c) Loperamide 8125.

(39 FR 22143, June 20, 1974, as amended at 42 FR 25499, May 18, 1977; 43 FR 38383, Aug. 28, 1978; 44 FR 40888, July 13, 1979)

BILLING CODE 4910-22-M

Controlled Substances Inventory List

Revised - January 1979
Subject to the Controlled Substances Act of 1970
(Public Law 91-513)

United States Department of Justice
Drug Enforcement Administration
Washington, D.C. 20537

Abbreviations

Aerosol.....	AR	Miscellaneous.....	MI
Bulk.....	BL	Ointment.....	ON
Capsule.....	CA	Powder.....	PW
Crystal.....	CR	Solution.....	SL
Disc.....	DI	Spray.....	SP
Drops.....	DP	Suppository.....	SU
Effervescent tablet.....	FT	Suspension.....	SS
Elixir.....	EL	Sustained rel cap.....	XC
Emulsion.....	EM	Sustained rel tab.....	XT
Enteric coated tab.....	ET	Syrup.....	SY
Enteric coated cap.....	EC	Tablet.....	TB
Gas.....	GS	Tincture.....	TR
Gel.....	GL	Wafer.....	WA
Granule.....	GR		
Hypodermic tablet.....	HT	Schedule	
Inhaler.....	IN	C-I.....	1
Injection.....	IJ	C-II.....	2
Jelly.....	JL	C-III.....	3
Liquid.....	LQ	C-IV.....	4
Lotion.....	LO	C-V.....	5
Lozenge.....	LZ		

LIST OF SCHEDULE II DRUGS

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
A			
ATA.....	CENCO H R LABS INC	TB	2
ACHLOR.....	WAYNE MEDICAL CO	CA	2
AMBAR EXTENTABS.....	VARIOUS	XT	2
AMOBARBITAL (SALTS).....	VARIOUS	PW	2
AMOBARBITAL (SALTS).....	VARIOUS	CA	2
AMOBARBITAL (SALTS).....	VARIOUS	LQ	2
AMOBARBITAL (SALTS).....	VARIOUS	TB	2
AMOBARBITAL (SALTS).....	VARIOUS	UJ	2
AMOBARBITAL D-LAY.....	LEMMON PHARMACAL CO	XT	2
AMPHAPLEX 10,20.....	PALMEDICO INC	TB	2
AMPHETABS NO.3 PINK.....	SHERRY PHARM CO	TB	2
AMPHETAMINE (SALTS) & (ISOMERS).....	VARIOUS	CA	2
AMPHETAMINE (SALTS) & (ISOMERS).....	VARIOUS	PW	2
AMPHETAMINE (SALTS) & (ISOMERS).....	VARIOUS	TB	2
AMPHOCAPS-TD.....	STARR PHARMACAL EC	CA	2
AMSEE, 2.....	KENYON DRUG COMPANY	CA	2
AMYLATE.....	HALSEY DRUG COMPANY	CA	2
AMYLAL (SALTS).....	VARIOUS	CA	2
AMYLAL (SALTS).....	VARIOUS	TB	2
AMYLAL (SALTS).....	VARIOUS	UJ	2
AMYLAL (SALTS).....	VARIOUS	PW	2
ANALGESIC INJECTION.....	IOWA UNIVERSITY	UJ	2
ANILERIDINE.....	MERCK & CO INC	PW	2
ANILERIDINE HYDROCHLORIDE.....	MERCK & CO INC	PW	2
APC W/MEPERIDINE HYDROCHLORIDE REDIPAK.....	WYETH LABORATORIES	TB	2
APC WITH DEMEROL.....	WINTHROP LABS	TB	2
AQUIETL.....	FLAR MEDICINE CO	LQ	2
B			
B & O.....	VARIOUS	SU	2
BAMADEX SEQUELS.....	LEDERLE LABORATORIES	XC	2
BARS 2,6.....	FREEMONT DRUG CO	TB	2
BARS 4,5.....	FREEMONT DRUG CO	CA	2
BARRISSED.....	RUGBY LABORATORIES	TB	2
BENAPAC.....	PHILADELPHIA CAPS CO	CA	2
BENZEDRINE.....	SMITH KLINE FRENCH	TB	2
BENZEDRINE SPANSULE.....	SMITH KLINE FRENCH	XC	2
BEUTHANASIA.....	BURNS-BIOTEC	UJ	2
BEUTHANASIA SPECIAL.....	BURNS-BIOTEC	UJ	2
BIODIDE (VET).....	BIOLAB CORP	UJ	2
BIPHETAMINE.....	VARIOUS	CA	2
BROWN'S MIXTURE GLYCERYLHA AND OPIUM.....	ANABOLIC INC	TB	2
C			
BUCOSED.....	BURNS-BIOTEC	UJ	2
BUTSECO.....	BOWMAN PHARMACEUTIC	TB	2

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
C			
CAROBESSE	CATAWBA CAROMED	XC	2
CHLOROPENT	FORT DODGE LABS	IJ	2
COCAINE	VARIOUS	PW	2
CODEINE (SALTS)	VARIOUS	IJ	2
CODEINE (SALTS)	VARIOUS	PW	2
CODEINE (SALTS)	VARIOUS	TB	2
CODONE	LEMMON PHARMACAL CO	TB	2
COMBUTHAL	DIAMOND LABS	IJ	2
COMBUTHAL	ABBOTT LABS	PW	2
COMPOBARS	VITARINE CO INC	CA	2
COSENAL	CALDWELL & BLOOR CO	CA	2

D			
D-8-DESAMINE YELLOW	STARR PHARMACAL LA	XT	2
D-9-ESOPHEN	STARR PHARMACAL LA	XT	2
DA-15-T	PREVENTIX PHARM CO	CA	2
DA-5, DA-10	PREVENTIX PHARM CO	TB	2
DATRIL W OXYCODONE	BRISTOL LABS	TB	2
DEE-DEX-5-10	MERICON INDUSTRIES	TB	2
DEE-10	VARIOUS	TB	2
DEL DRIN, 5	MERICON	TB	2
DELCOBESSE	MAST M M COMPANY	CA	2
DELCOBESSE	DELCO CHEMICAL	CA	2
DELCOBESSE	DELCO CHEMICAL	TB	2
DEMEROL	WINTHROP LABS	LQ	2
DEMEROL	WINTHROP LABS	IJ	2
DEMEROL	WINTHROP LABS	TB	2
DEMEROL APAP	BREON LABS	TB	2
DESAMINE	STARR PHARMACAL LA	TB	2
DESAMINE # 100 # 15	STARR PHARMACAL LA	XC	2
DESOPHEN #1	STARR PHARMACAL LA	XC	2
DESOPHEN-G # 10 GREEN (SPECIAL FORMULA)	STARR PHARMACAL KC	TB	2
DESOPHEN-L #5	STARR PHARMACAL KC	TB	2
DESIOXYPHEDRINE (SALTS) & ISOMERS	VARIOUS	PW	2
DESIOXYPHEDRINE (SALTS) & ISOMERS	VARIOUS	CA	2
DESIOXYM	ABBOTT LABS	TB	2
DESIOXYM (GRADUET)	VARIOUS	TB	2
DEXAMPEX	LEMMON PHARMACAL CO	CA	2
DEXAMPEX	LEMMON PHARMACAL CO	TB	2
DEXAMYL # 1, # 2	VARIOUS	CA	2
DEXAMYL TABLETS	SMITH KLINE FRENCH	TB	2
DEXDELAY T.D.	VARIOUS	XC	2
DEXEDRINE	VARIOUS	TB	2
DEXEDRINE	VARIOUS	EL	2
DEXEDRINE	VARIOUS	CA	2
DEXEDRINE	VARIOUS	XC	2
DEXTRO 15 PROLONGSULES	MAST M M COMPANY	CA	2
DEXTROAMPHETAMINE & AMOBARBITAL	VARIOUS	CA	2
DEXTROCELL	JONES AND VAUGHAN	TB	2
DIABUTAL	DIAMOND LABS	IJ	2
DIANARIT-B	CIBA GEIGY CORP	CA	2
DIARRHEA TABLETS	ANABOLIC INC	TB	2
DICODID BITARTRATE	KNOLL PHARMACEUTICAL	TB	2
DICODID BITARTRATE	KNOLL PHARMACEUTICAL	PW	2
DIDRATE	PENICK & CO	BL	2
DIHYDROCOMP	KIRKMAN LABS	TB	2
DILAUDID	KNOLL PHARMACEUTICAL	TB	2
DILAUDID	KNOLL PHARMACEUTICAL	IJ	2
DILAUDID	KNOLL PHARMACEUTICAL	PW	2
DILAUDID	KNOLL PHARMACEUTICAL	LQ	2
DIOCOL	BELL PHARM CORP	LQ	2

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
DIONIN	MERCK & CO INC	PW	2
DIPHENOXYLATE HCL	MAILINCKRODT	BL	2
DIPHENOXYLATE HCL	PENICK & CO	BL	2
DIPHYLETS	TUTAG PHARMACEUTICAL	CA	2
DL-DESOXYPHEDRINE	VARIOUS	TB	2
DL-DESOXYPHEDRINE	VARIOUS	PW	2
DOFFS-WT	DOFS LABS	XC	2
DOFSDEX	DOFS LABS	CA	2
DOFSDEX	DOFS LABS	TB	2
DOLOPHINE HCL	LILLY ELI & CO	IJ	2
DOLOPHINE HCL	LILLY ELI & CO	TB	2
DUO BARS	TRUXTON C O INC	CA	2
DX-2.5.5.10	WESTERN RESEARCH LAB	TB	2

E			
EQUANE ANESTHETIC (VET)	VETERINARY LABS INC	IJ	2
ESKATROL	SMITH KLINE FRENCH	XC	2
ETHOBARAL	WYETH LABORATORIES	CA	2
ETHYLMORPHINE HCL	PENICK & CO	BL	2
EU SLEEP	AMERLAB	IJ	2
EUSOL SOLUTION	MUTUAL PHARM	IJ	2
EUTH-O-BARS	HOLMES SERUM CO	IJ	2
EUTHA VET-3 & 6	PACIFIC VET SUPPLY	IJ	2
EUTHANASIA	VARIOUS	IJ	2
EUTHANASIA	VARIOUS	SL	2
EUTHANOL-6	TRICO PHARM	IJ	2
EUTHANSOL	VARIOUS	IJ	2
EUTHENSIA	ARIZONA VET SUPPLY	IJ	2

F			
FATAL (VET)	NORTH AMERICAN PHARM	IJ	2
FENTANYL CITRATE USP	PENICK & CO	BL	2
FERNDEX	FERNDAL LABS	TB	2
FETAMIN	MISSION PHARM CO	TB	2

G			
GUIA-LYN WITH CHERRY	SCRIP INC	LQ	2

H			
HOURSSED	DELTA DRUG (FLA)	CA	2
HYCODAN	ENDO LABS INC	PW	2
HYDROMORPHONE	VARIOUS	IJ	2
HYDROMORPHONE	VARIOUS	PW	2

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
I			
INNOVAR	MCNEIL LABS INC	IJ	2
INNOVAR-VET	PITMAN-MOORE	IJ	2
IPACAC & OPIUM POWDER	VARIOUS	BL	2

L			
LAMABARS #1 & #2	LANNETT CO	CA	2
LAUDACIN	SUTLUFF & CASE	LQ	2
LAYSAB	TRUXTON C O INC	TB	2
LERITINE	MERCK & CO INC	IJ	2
LERITINE	MERCK & CO INC	TB	2
LETALUS SOLUTION	BARBER VET SUPPLY	IJ	2
LEVO-DROMORAN	ROCHE LABS	TB	2
LEVO-DROMORAN	ROCHE LABS	IJ	2

M			
M-99 H-50-30	D-M PHARMACEUTICALS	IJ	2
MASON'S EQUINE (VET)	STATE VET SUPPLY	IJ	2
MEPERGAN	WYETH LABORATORIES	IJ	2
MEPERIDINE	VARIOUS	IJ	2
MEPERIDINE	VARIOUS	TB	2
METAZOCINE	PENICK & CO	BL	2
METHADONE HCL	MALLINCKRODT	BL	2
METHADOSE	MALLINCKRODT	LQ	2
METHAMPEX	LEMMON PHARMACAL CO	TB	2
METHAMPHETAMINE	VARIOUS	PW	2
METHAMPHETAMINE	VARIOUS	TB	2
METHAQUALONE	GANE'S CHEMICAL WKS	BL	2
METHYLPHENEDATE HCL	VARIOUS	TB	2
MONOSYL	ARCUM PHARM CORP	TB	2
MORPHINE	VARIOUS	IJ	2
MORPHINE	VARIOUS	PW	2
M50-50 DIPRENORPHINE (VET)	LEDERLE LABORATORIES	IJ	2
M99 ETORPHINE (VET)	LEDERLE LABORATORIES	IJ	2

N			
NAPIZEM	ZEMMER CO INC	PW	2
NAPIZEM VIAL	ZEMMER CO INC	IJ	2
NEB-KAP	SCRIP INC	CA	2
NEBUTAL	VARIOUS	EL	2
NEBUTAL	VARIOUS	IJ	2
NEBUTAL	VARIOUS	TB	2
NEBUTAL	VARIOUS	CA	2
NEOTAL (PINK)	CALDWELL & BLOOR CO	TB	2
NIDAR	ARMOUR PHARM	TB	2
NIGHT CAPS	BOWMAN PHARMACEUTIC	CA	2

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
O			
OBETROL-10	OBETROL PHARM	TB	2
OBETROL-20	OBETROL PHARM	TB	2
OBOTAN	MALLINCKRODT	TB	2
OMNISED	DELTA DRUG (FLA)	TB	2
OPIUM	VARIOUS	TB	2
OPIUM	VARIOUS	PW	2
OXYCODONE HCL	MALLINCKRODT	BL	2
OXYCODONE TEREPTHALATE	MALLINCKRODT	BL	2
OXYDESS	VARIOUS	TB	2

P			
PANTOPON	PENICK & CO	BL	2
PANTOPON	ROCHE LABS	IJ	2
PARADUAL	PARAMOUNT SURG SUPP	CA	2
PAREST 200	PARKE-DAVIS & CO	CA	2
PAREST 400	PARKE-DAVIS & CO	CA	2
PARZONE BITARTRATE	MALLINCKRODT	PW	2
PENBAR	VANGARD LABS	CA	2
PENTO TABS	MERCON INDUSTRIES	TB	2
PENTOBARBITAL	VARIOUS	PW	2
PENTOBARBITAL	VARIOUS	TB	2
PENTOBARBITAL	VARIOUS	CA	2
PENTOBARBITAL	VARIOUS	IJ	2
PENTOBARBITAL SODIUM (VET)	VARIOUS	IJ	2
PENTOSOL	VARIOUS	IJ	2
PERCOPAN	ENDO LABS INC	CA	2
PERCOCET-5	ENDO LABS INC	TB	2
PERCOPAN	ENDO INC	TB	2
PETHADOL	HALSEY DRUG COMPANY	TB	2
PHENAZOCINE HBR POWDER	PENICK & CO	BL	2
PHENMETRAZINE HYDROCHLORIDE	WESTERN PHER LABS	PW	2
POPPY STRAW	VARIOUS	BL	2
PRELUDIN	VARIOUS	TB	2
PRO-EUTHA SOL 10	PRO-MED CO	IJ	2
PYRADEINE W ANTHISTAMINE & CODEINE	DAYLIN MED & SURG	SY	2
PYRAMID IMPROVED	BARRE DRUG CO	EL	2

QUAALUDE	BOER INC	TB	2
QUAD-SET	KENYON DRUG CO	TB	2
QUADAMINE	HARVEY LABS	TB	2
QUADRA SED	VARIOUS	TB	2

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
R			
RITALIN	CIBA-GEIGY CORP.	IJ	2
RITALIN	VARIOUS	TB	2
RODINE 7 & 3	PRODENT PHARM.	TB	2
ROTASE MITTE	NORTHROP PHARM.	TB	2
S			
SACCAMINE	TRUXTON C O INC.	TB	2
SACCAMINE-10	TRUXTON C O INC.	TB	2
SACCAMINE-20	TRUXTON C O INC.	TB	2
SBP	LEMMON PHARMACAL CO.	TB	2
SCHUCKLES 1	MERICON INDUSTRIES	CA	2
SEBAR	VANGARD LABS	CA	2
SEC-KAP	SCRIP INC.	CA	2
SECANAP	ZEMMER CO INC.	TB	2
SECO-B	FLEMING AND COMPANY	CA	2
SECOBARBITAL	VARIOUS	LQ	2
SECOBARBITAL	VARIOUS	CA	2
SECOBARBITAL	VARIOUS	PW	2
SECOBARBITAL (SALTS)	VARIOUS	IJ	2
SECOBARBITAL & AMOBARBITAL	VARIOUS	TB	2
SECONAL	LILLY ELI & CO.	CA	2
SECONAL SODIUM	LILLY ELI & CO.	EL	2
SECOPHEN (WHITE SQUARE)	MALLARD INC.	CA	2
SECTAL D.S.	SHERBY PHARM CO.	TB	2
SECTAL S.S.	SHERBY PHARM CO.	CA	2
SERNYLAN	BIO-CEUTIC LABS	IJ	2
SERNYLAN (VIAL)	PHILIPS ROXANE LABS	IJ	2
SLEEPAWAY	FORT DODGE LABS	IJ	2
SODACITROL	SCRIP INC.	LQ	2
SOMNAPAC	COOPER LABS INC.	CA	2
SOMNAPAC FOURTE	COOPER LABS INC.	CA	2
SOMNOPENTYL	PITMAN-MOORE	IJ	2
SOPOR	ARNAR STONE LABS	TB	2
SPANCAP	VARIOUS	CA	2
ST SF COBARR	SCOT-TUSSIN PHARM.	CA	2
STAT	CHADWICK PHARMACALS	XT	2
STIM	SCRIP INC.	CA	2
SUBLIMAZE	MCNEIL LABS INC.	IJ	2
SYNTHETIC CODEINE	PENICK & CO	BL	2
T			
THERBAINP	VARIOUS	BL	2
TIMELY DELSOX	QUEEN CITY PHARMACAL	XT	2
TIMELY DELSOX	QUEEN CITY PHARMACAL	XC	2
TRI-BARR	CUMBERLAND PHARM.	TB	2
TRI-BARRS	VARIOUS	CA	2
TRI-SED	VARIOUS	TB	2
TRIBARR	LANNETT CO	CA	2
TRIO-BAR	VARIOUS	TB	2
TRIOBAR	QUEEN CITY PHARMACAL	TB	2
TRIP-NO TIC	ORTEGA PHARM CO	CA	2
TRIPLE BARBITURATE	VARIOUS	TB	2
TRIPLE-BARR	MCONE KIRK LABS	TB	2
TRUXABARR BROWN	TRUXTON C O INC.	TB	2
TWIN BARBITAL NO2	RUGBY LABORATORIES	CA	2
TYLOX	MCNEIL LABS INC.	CA	2

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
U			
U.H. BROMPTON'S MIXTURE	IOWA UNIVERSITY	SL	2
UTHOL SOLUTION (VET)	BUTLER W A CO	IJ	2
V			
V-PENTO (VET)	BUCK AND SON INC.	IJ	2
W			
WESTADONE	VITARINE CO INC.	FT	2
WITCHER'S EQUINE ANESTHETIC	WITCHER D L	IJ	2
WITCHER'S EUTHANASIA (VET)	WITCHER D L	IJ	2
Z			
ZEMSOXYN	ZEMMER CO INC.	TB	2

CONSOLIDATED LIST-SCHEDULE III, IV, AND V DRUGS

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
A			
A.C.A.P.	VARIOUS	TB	3
A.C.D.	PHILIPS ROXANE LABS	TB	5
A.C.D.	PHILIPS ROXANE LABS	CA	3
A.P.B.	LEMMON PHARMACAL CO	TB	3
A-N-R # 1 & # 2	PALMEDICO INC	SU	3
A-POXIDE	ABBOTT LABS	CA	4
A-BER-C EXPECTORANT	BUCKSTUHL COMPANY	SY	5
ABGAT	HALSOM DRUG CO	TB	3
ABGAT	HALSOM DRUG CO	CA	3
AC TUSSIN	MAST M M COMPANY	SY	5
ACCOFAM	VITABINE CO INC	CA	5
ACEDOVAL	VALE CHEMICAL CO	TB	3
ACETA W CODEINE	CENTURY PHARM INC	TB	3
ACETAMINOPHEN W CODEINE	VARIOUS	TB	3
ACODA-ZEM	ZEMMER CO INC	TB	3
ACODA-ZEM	ZEMMER CO INC	CA	3
ACRUSED	WILL STAN PRODUCTS	LQ	3
ACTACIN C	VARIOUS	LQ	5
ACTAGEN C	GENEX DRUG CORP	LQ	5
ACTAMINE-C EXPECTORANT	MOORE DRUG EXCHANGE	LQ	5
ACTECON C	VARIOUS	LQ	5
ACTIFED-C EXPECT.	BURROUGHS WELLCOME	LQ	5
ACTION-C EXPECTORANT	MICHIGAN PHARM	LQ	5
ACTIPAR-C	PARMED PHARM	LQ	5
ACUTUSS EXPECTORANT WITH CODEINE	PHILIPS ROXANE LABS	LQ	5
ADATUSS	VARIOUS	SY	3
ADCOUSS	ADCO PHARM	LQ	5
ADPEX B	LEMMON PHARMACAL CO	TB	4
ADPEX B	LEMMON PHARMACAL CO	XC	4
ADPEX P	LEMMON PHARMACAL CO	CA	4
ADPEX P BLUE/WHITE	LEMMON PHARMACAL CO	TB	4
ADPHEN	FERNDAL LABS	TB	3
AFED-C EXPECTORANT SYRUP	GENEVA GENERICS	SY	5
AIDANT	NOYES P J CO	TB	3
AL HAI	VARIOUS	TB	3
AL HAI	VARIOUS	CA	3
ALADRINE	VARIOUS	TB	3
ALADRINE SUSPENSION	MERIT PHARM CO	SS	3
ALAMINE C	NORTH AMERICAN PHARM	LQ	5
ALBUTAL WHITE	BELL GEO N CHEMISTS	TB	3
ALKAMINT	MACESSIN & COMPANY	TB	4
ALLERPRIN W CODEINE	RUGBY LABORATORIES	LQ	5
ALLERIN-C EXPECTORANT	RUGBY LABORATORIES	LQ	5
ALLERPHED-C	SPENCER HEAD INC	LQ	5
ALLERTANE DC	PHARMECON INC	LQ	5
ALLERTANE DC EXPECTORANT	FATON PHARM INC	LQ	5
ALPHENAL	GANE'S CHEMICAL WKS	BL	3
ALPRINE	ULMER PHARMACAL CO	TB	3
ALURATE	ROCHE LABS	EL	3
ALURATE VERDUM	ROCHE LABS	EL	3
ALURO	FOY LABS INC	TB	4
AM TUSS	AMID LABS INC	SY	5
AMBENTYL EXPECTORANT	PARKE DAVIS & CO	SY	5
AMBUTAL	AREND MILLER PHARM	TB	3
AMEGINE	AREND MILLER PHARM	TB	3
AMERITABS	HAUCK W E INC	TB	3
AMGENAL EXPECTORANT	GENEX DRUG CO	LQ	5
AMMEX 100 MG	AMPLE PHARM CO	XC	3
AMOGEL PG	NORTH AMERICAN PHARM	LQ	5
AMOGEL PG TABLETS	NORTH AMERICAN PHARM	TB	3
AMPHASUB (LIGHT PINK)	PALMEDICO INC	TB	3
AMPHAZINE (BROWN AND YELLOW)	PALMEDICO INC	XC	3
ANAGRAINE	HARNEL PHARM COMPANY	TB	3
ANALIDS	O'NEAL JONES FELDMAN	TB	4
ANALGESIC TABLETS	VITABINE CO INC	TB	3
ANALGESIC ANTIPYRETIC ANTITUSSIVE	DRUMMER LABS	TB	3
ANALGESIN	DANIELS PHARM	CA	3
ANALGESTINE	MALLARD INC	TB	3
ANALGESTINE FORTE	MALLARD INC	CA	3
ANEXSIA WITH CODEINE	BEECHAM-MASSENGILL	TB	3
ANEXSIA-D	BEECHAM-MASSENGILL	TB	3
ANODYNOS-DHC	COOPER LABS INC	TB	3
ANODUAN	MALLARD INC	CA	3
ANORACT	FORT DAVID LABS	TB	3

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
ANOREX	DUNHALL PHARM INC	TB	3
ANOXINE (ORANGE)	WINSTON PHARMACEUTIC	TB	3
ANOXINE-AM	WINSTON PHARMACEUTIC	CA	4
ANOXINE-T (BLUE AND ORANGE)	WINSTON PHARMACEUTIC	XC	3
ANSER	VARIOUS	SU	3
ANTI-HIST	BEVERLY MEDICAL SUP	SY	5
ANTI-TEN	CENTURY PHARM INC	TB	3
ANTINAUSEA	WEBCON PHARM	SU	3
ANTITUSSIVE EXPECTORANT	DRUMMER LABS	LQ	5
APA-DEINE	VANGUARD LABS	TB	3
APC W BUTALBITAL	VARIOUS	TB	3
APC W CODEINE	VARIOUS	CA	3
APC W CODEINE	VARIOUS	TB	3
APC W PHENOBARBITAL	VARIOUS	TB	4
APC WITH IBA	DANBURY PHARMACAL	CA	3
APC WITH IBA	DANBURY PHARMACAL	TB	3
APCODEINE	APPROVED PHARM	TB	3
APHONALS	ORMONT DRUG & CHEM	TB	3
APITINE	THOMAS PHARM	TB	3
APITROL	HEALTHCO	TB	3
APROBARBITAL	VARIOUS	EL	3
APROBARBITAL	VARIOUS	PW	3
APROBARBITAL	VARIOUS	TB	3
APSLU WITH ATROPINE	HALSOM DRUG COMPANY	TB	3
APTROL (LAVENDER)	MISEMER PHARM INC	TB	3
APTROL LA	MISEMER PHARM INC	XC	3
AQUACHLORAL	WEBCON PHARM	SU	4
ARBUTAL	ARCUM PHARM CORP	TB	3
ARCOBAN	ARCUM PHARM CORP	TB	4
ARCOTROL	ARCO PHARMACEUTICALS	TB	3
ASA & CODEINE COMPOUND	LILLY ELI & CO	TB	3
ASA & CODEINE COMPOUND	LILLY ELI & CO	CA	3
ASALCO NO.2	JENKINS LABS INC	TB	3
ASCAPHEN W CODEINE 1/4	CALDWELL & BLOOR CO	TB	3
ASCAPHEN WITH CODEINE 1/2	CALDWELL & BLOOR CO	TB	3
ASCODEEN-30	BURROUGHS WELLCOME	TB	3
ASCONEZ D-C	ALLISON LABS	LQ	5
ASCRIFTIN W CODEINE	VARIOUS	TB	3
ASPHAC W CODEINE	CENTRAL PHARMACAL CO	TB	3
ASPIR ACETOPHEN	BOERICKE AND TAFEL	CA	3
ASPIR CODE	ROBINSON LABORATORY	TB	5
ASPIR SED	BIO-FACTOR LABS	TB	4
ASPIRIN COMPOUND W CODEINE	VARIOUS	TB	3
ASPIRIN COMPOUND W DOVERS POWDER	VARIOUS	CA	3
ASPIRIN PHENACETIN PB W CODEINE PHOS	ZENITH LABS INC	CA	3
ASPIRIN W CODEINE	VARIOUS	TB	3
ASPIRO COMPOUND	VARIOUS	TB	3
ATIVAN	WYETH LABORATORIES	TB	4
ATUSS	TRI STATE PHARM	LQ	3
AZENE	ENDO LABS INC	CA	4

B

B AND R NO 280, 281, 334	BOERICKE AND TAFEL	TB	4
B B S	VARIOUS	TB	3
B-P-P	LEMMON PHARMACAL CO	TB	3
B-S-S ELIXIR	CALDWELL & BLOOR CO	EL	3
B-BAR	FOY LABS INC	TB	4
B-SED-C	SCRIP INC	TB	4
BABASOL NO 2 (ASO BUFFER)	GANE'S CHEMICAL WKS	BL	4
BACARATE	TUTAG PHARMACEUTICAL	TB	3
BAMATE	CENTURY PHARM INC	TB	4
BAMO	MISEMER PHARM INC	TB	4
BANCAP W CODEINE	VARIOUS	CA	3

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
BANOGESIC	GENERAL PHARM INC	TB	3
BANOBESE	SEATRACE CO INC	TB	3
BAR ELIXIR	SCRIP INC	EL	4
BAR 25,30,15,100	SCRIP INC	TB	4
SARAHIST E C	VARIOUS	LQ	3
BARBACINE	WAYNE MEDICAL CO	TB	4
BARBATOSE NO.2	VALE CHEMICAL CO	TB	4
BARBELLONNA	LIMA MEDICAL SUPPLY	TB	4
BARBELLIN C.T. GREEN	CALDWELL & BLOOR CO	TB	4
BARBIKOTE	MACESLIN & COMPANY	TB	4
BARBINAL # 3	VARIOUS	CA	3
BARBINUX	PHYSICIANS SUPPLY	TB	4
BARBIPIL	NORTH AMERICAN PHARM	TB	4
BARBITA	NORTH AMERICAN PHARM	TB	4
BARBITAB 1/4 & 1/2	VISTA LABS	TB	3
BARBITAL (SALTS)	VARIOUS	PW	4
BARBITAL (SALTS)	VARIOUS	TB	4
BARBULEN	LEN-TAG COMPANY	TB	3
BARFED W CODEINE EXPECTORANT	BARRY MARTIN PHARM	LQ	3
BARTINAL	ZEMMER CO INC	TB	4
BARTUS	BARRE DRUG CO	SY	5
BAY-HISTINE DH	BAY LABORATORIES INC	LQ	3
BAYACOFF	BAY LABORATORIES INC	SY	5
BAYHISTINE EXPECTORANT	BAY LABORATORIES INC	LQ	3
BAYTUSSIN AC	BAY LABORATORIES INC	LQ	3
BEL-PHEN NO.2	STANLABS INC	TB	4
BELERGAN	CHEMURCH LABS	TB	4
BELLADONNA-CHARCOAL & PHENOBARBITAL	RUGBY LABORATORIES	TB	4
BELLO-PHEN	UNITED RESEARCH LABS	TB	4
BENAPHEN NO. 2	CUMBERLAND PHARM	CA	4
BENITYL	FARMACIA NUEVA	LQ	4
BERLETE	WYETH LABORATORIES	EL	4
BERGESIC 65	PHARMED INC	CA	4
BETA-CHLOR	MEAD JOHNSON LABS	TB	4
BEUTHANASIA D	VARIOUS	IJ	3
BEV-5 COUGH	BEVERLY MEDICAL SUP	SY	5
BEWSTOL	STANDARD DRUG PROD	TB	3
BEXOPHENE-65 W APC	MALLARD INC	CA	4
BIATUSS-AC	LINDEN LABORATORIES	LQ	3
BIO-DAYSED	BIO-FACTOR LABS	TB	3
BIO-NIL	BIOLINE LABS INC	TB	3
BIO-TAI	PHILIPS ROXANE LABS	IJ	3
BIOPEC	CALDWELL & BLOOR CO	TB	3
BIOPHEN EXPECTORANT W CODEINE	BIOLINE LABS INC	LQ	3
BIOPHEN VC EXPECTORANT W CODEINE	BIOLINE LABS INC	LQ	3
BIOTAL	BIO-CEUTIC LABS	IJ	3
BIOTANE DC EXPECTORANT	BIOLINE LABS INC	LQ	3
BIPECTOL	VALE CHEMICAL CO	WA	3
BISKAPEC	TRUXTON C O INC	TB	3
BISMULANS	VARIOUS	CA	3
BISMUTH & PAREGORIC	VARIOUS	TB	3
BISMUTH AND SALOL COMP WITH PAREGORIC	DUROT DRUG COMPANY	SS	5
BISMUTH AND SALOL WITH OPIUM	TRUXTON C O INC	LQ	3
BISMUTH-PAREGORIC-PECTIN	LEMMON PHARMACAL CO	TB	3
BISMUTH-SALOL ZINC PAREGORIC-MIXTURE	BOWMAN PHARMACEUTIC	SS	5
BISMUTH-PECTIN & PAREGORIC	DRUMMER LABS	TB	3
BLADDER MIXTURE PLUS PHENOBARBITAL	IOWA UNIVERSITY	LQ	4
BLOMKISAL	RAPHET PHARMACEU	LQ	4
BOI	SARON PHARMACAL CORP	TB	3
BONCOGESIC W CODEINE	BONCO LABORATORIES	CA	3
BONTRIL PDM	CARNICK LABS	TB	3
BORN-OREX	BORNEMAN & SONS	CA	3
BORN-OREX	BORNEMAN & SONS	TB	3
BREVITAL SODIUM	LILLY ELI & CO	IJ	4
BRIGEN-G	GRAFTON PHARM	CA	4
BRO-TUSS AC	BROTHERS PHARM INC	LQ	3
BROGESIC	BROTHERS PHARM INC	TB	3
BROM-CORT	INTERSTATE DRUG EXCH	SY	5
BROMANATE DC EXPECTORANT	VARIOUS	LQ	3
BROMANYL EXPECTORANT	VARIOUS	LQ	3
BROMATANE DC EXPECTORANT	VARIOUS	LQ	3
BROMATUSS EXPECTORANT W CODEINE	RUGBY LABORATORIES	LQ	3
BROMPHEN DC EXPECTORANT	RUGBY LABORATORIES	LQ	3
BROMPHENATE DC EXPECTORANT	WOLINS PHARM CORP	LQ	3
BROMPHENIBAMINE EXPECTORANT DC	VARIOUS	LQ	3
BROPHENIBAMINE W CODEINE	KAISER FOUND. HOSP	LQ	3
BROWN-CORT DC EXPECTORANT	INTERSTATE DRUG EXCH	LQ	3
BRONCHO-TUSSIN IMPROVED	FIRST TEXAS PHARM	LQ	3

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
BRONICOF	JENKINS LABS INC	LQ	3
BROWN MIXTURE	VARIOUS	LQ	3
BUBARTAL TT	PHILIPS ROXANE LABS	TB	3
BUBROMIDE	TRUXTON C O INC	TB	3
BUFFERED ASC W CODEINE	CHROMALLOY PHARM INC	TB	3
BUSERP	TRUXTON C O INC	TB	3
BUSODIUM	TRUXTON C O INC	CA	3
BUSODIUM	TRUXTON C O INC	EL	3
BUSODIUM	TRUXTON C O INC	TB	3
BUTA	FREEMONT DRUG CO	TB	3
BUTABAR	VARIOUS	EL	3
BUTABARBITAL	ABBOTT LABS LTD	BI	3
BUTABARBITAL (SALTS)	VARIOUS	TB	3
BUTABARBITAL (SALTS)	VARIOUS	EL	3
BUTABARBITAL (SALTS)	VARIOUS	CA	3
BUTABON	BONCO LABORATORIES	TB	3
BUTACYL	QUEEN CITY PHARMACAL	TB	3
BUTAGEM	CLARY PHARM	TB	3
BUTAGEN-G	GRAFTON PHARM	EL	3
BUTAHAB	HABERLE DRUG COMPANY	EL	3
BUTAL	VARIOUS	EL	3
BUTAL	VARIOUS	TB	3
BUTALAN	LANNETT CO	EL	3
BUTALBITAL (SALTS)	VARIOUS	TB	3
BUTALBITAL (SALTS)	VARIOUS	CA	3
BUTALBITAL (SALTS)	VARIOUS	PW	3
BUTALIX	VALE CHEMICAL CO	SY	3
BUTALOWE	WILDER LABS	TB	3
BUTAMID	VANGARD LABS	EL	3
BUTASED	VARIOUS	TB	3
BUTASERP	QUEEN CITY PHARMACAL	TB	3
BUTASOD	BORNEMAN & SONS	EL	3
BUTATIN	WINSTON PHARMACEUTIC	TB	3
BUTATRAN	PALMEDICO INC	TB	3
BUTAZEM	ZEMMER CO INC	EL	3
BUTAZEM	ZEMMER CO INC	TB	3
BUTETHAL	GANE'S CHEMICAL WKS	BI	3
BUTICAPS	MICHEL LABS INC	CA	3
BUTISERPAPIDE	VARIOUS	TB	3
BUTISERPINE	VARIOUS	TB	3
BUTISOL (SODIUM)	VARIOUS	TB	3
BUTISOL (SODIUM)	VARIOUS	EL	3
BUTIZIDE	VARIOUS	TB	3
BUTTE ELIXIR	SCRIP INC	LQ	3
BUTTE 15 & 30	SCRIP INC	TB	3

C

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
C.D.P.	GENEX DRUG CORP	CA	4
CADOPHEN	BELLEVUE SURGICAL CO	CA	3
CALBISUL	CALDWELL & BLOOR CO	LQ	3
CALCIBORNE	ABBOTT LABS	SY	5
CALPHEN	JAMESON McKAMES INC	CA	3
CAN-METRAZINE	CAMALL COMPANY	AC	3
CAN-METRAZINE	CAMALL COMPANY	TB	3
CAMUATE	CAMALL COMPANY	TB	4
CANQUIL 400	CAMALL AND CO	TB	4
CAP-METRAZINE	CAMALL COMPANY	AC	3
CAPITAL WITH CODEINE	CARNICK LABS	TB	3
CAPITAL WITH CODEINE	CARNICK LABS	SS	3
CARBTRITAL	VARIOUS	CA	3
CARBTRITAL	PARKE DAVIS & CO	EL	3
CARLISAN	FARMACIA CARLISAN	LQ	4
CARNUSEN	QUEEN CITY PHARMACAL	TB	4
CAROTUSSIN WITH CODEINE	CARROLL CHEM CO	LQ	3
CEPHALON	BONCO LABORATORIES	TB	3
CEPHACAP	BONCO LABORATORIES	CA	3
CEROSE	IVES LABS INC	LQ	3
CETRO CROSE	IVES LABS INC	LQ	3
CHARBEPHEN	MODERN DRUG CO	TB	4
CHARBO-PHEN	CUMBERLAND PHARM	TB	4
CHARCOAL COMPOUND	VARIOUS	TB	4
CHARDONNA	ROBER INC	TB	4
CHARDONNA BLACK	PHARMECON INC	TB	4

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
CHARLOID CHARCOAL COMPOUND	WESLEY PHARMACAL CO.	TB	4
CHARPHEN	VARIOUS	TB	4
CHERACLO W CODEINE	BORNEHMAN & SONS	LQ	5
CHERACOL	VARIOUS	LQ	5
CHERALIN WITH CODEINE	LANNETT CO.	LQ	5
CHERATUSSIN-AC	LIFE LABORATORIES	SY	5
CHERI HANCE W CODEINE	HANCE BROS & WHITE	LQ	5
CHERI-APRO	APPROVED PHARM.	LQ	5
CHERI-HAL WITH CODEINE	HALSOM DRUG COMPANY	LQ	5
CHERI-SED	HALSOM DRUG COMPANY	LQ	5
CHEROPRY WITH CODEINE	BEYMAN DRUG CO	LQ	5
CHEROSPECT	TRUXTON C O INC	LQ	5
CHERALEX W CODEINE	VARIOUS	LQ	5
CHERRY COMPOUND W CODEINE	INTERSTATE DRUG EXCH.	SY	5
CHILDREN'S COUGH SYRUP	MICHIGAN PHARM.	SY	5
CHLOR-MAG SOLUTION	MUTUAL PHARM.	SL	4
CHLOR-TRIMETON EXPECTORANT W CODEINE	SCHERING CORP.	SY	5
CHLORAL BETAINE	HOFFMAN-TAFT	PW	4
CHLORAL HYDRATE	VARIOUS	SY	4
CHLORAL HYDRATE	VARIOUS	CA	4
CHLORAL THESIA (VET)	BIG ISLAND RANCH	U	4
CHLORAL-DEX (VET)	VETERINARY LABS INC	U	4
CHLORAL-MAG	TRICO PHARM.	U	4
CHLORAL-THESIA	VARIOUS	U	4
CHLORAL- (VET)	BUTLER W A CO	U	4
CHLORDIAZEPORIDE	VARIOUS	CA	4
CHLORDIAZEPORIDE	VARIOUS	PW	4
CHLORHISTINE DH	FATON PHARM INC	LQ	5
CHLORHISTINE EXPECTORANT	VARIOUS	LQ	5
CHLOROPHEN	ROBINSON LABORATORY	TB	3
CHLORPHENIRAMINE CODEINE SYRUP	DORSEY LABORATORIES	LQ	5
CHLORPHENTERMINE	VARIOUS	TB	3
CHRISTODYNE-DHC	CANFIELD AND CO	TB	3
CIDICOL	UPJOHN CO	LQ	5
CITRA FORTE	VARIOUS	SY	3
CITRA FORTE	VARIOUS	CA	3
CITRATED CODEINE COMPOUND	LIFE LABORATORIES	LQ	5
CITRATED CODEINE W ANTIHISTAMINE	LIFE LABORATORIES	LQ	5
CLIPOXIDE	SCHEN HENRY INC	CA	4
CLONOFIN	ROCHE LABS	TB	4
CLOBAZEPATE	VARIOUS	CA	4
CLOBAZEPATE	VARIOUS	PW	4
CLOBAZEPATE	VARIOUS	TB	4
CO XAN	CENTRAL PHARMACAL CO.	SY	5
CO-ENTERO	COAST LABS	TB	4
CO-HIST-X	AREND MILLER PHARM.	LQ	5
CO-HISTINE DH REFORMULATED	KAY PHARMACAL CO	EL	5
COASTALDYNE W CODEINE	COASTAL PHARM CO	TB	3
COCILAN COMPOUND	TRUXTON C O INC	SY	5
COCILANA COMPOUND	BERRY & WITTINGTON	SY	5
COCILANA COMPOUND W CODEINE	VARIOUS	LQ	5
COCILCO WITH CODEINE	CARROLL CHEM CO	SY	5
COCILENE	GENERIC PHARMACAL	SY	5
COCINALLO COMPOUND W DIONIN	BORNEHMAN & SONS	SY	5
CODAKIRK #3	KIRKMAN LABS	TB	3
CODALAN 1,2 & 3	LANNETT CO	TB	3
CODAP	TUTAG PHARMACEUTICAL	TB	3
CODAPAC	UNITED PHARM.	TB	5
CODATUSS-C	MOORE KIRK LABS	EL	5
CODE COCLAN	APPROVED PHARM	SY	5
CODECON EXPECTORANT	ALLISON LABS	LQ	5
CODENIST WITH CODEINE PHOSPHATE	GENEVA GENERICS	SY	5
CODEL	ELDER P B COMPANY	SY	5
CODILENE	HANCE BROS & WHITE	LQ	5
CODIMAL DH	CENTRAL PHARMACAL CO	SY	3
CODITRATE	CENTRAL PHARMACAL CO	SY	3
CODITRATE	CENTRAL PHARMACAL CO	TB	3
CODRIN	UNITED PHARM.	SS	5
COGESIC NO 3 W CODEINE	BO-MISE COMPANY	TB	3
COHIDRATE	COASTAL PHARM CO	CA	4
COHISTINE EXPECTORANT	COOPER DRUG CO	LQ	5
COLANA WITH DIONIN	HANCE BROS & WHITE	SY	5
COLAREST PG	BO-MISE COMPANY	LQ	5
COLDATE	ELDER P B COMPANY	TB	3
COLBEX COMPOUND CAPSULES	ROWELL LABS INC	CA	3
COLBEX COMPOUND ELIXIR	ROWELL LABS INC	EL	5
COMBINATION TABLETS NO 157	BOERICKE AND TAFEL	TB	4
CONCAP-PHENOBARBITAL	CONSOLIDATED MIDLAND	XC	4

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
CONEX W CODEINE	VARIOUS	LQ	5
CONTINEX	RHODE J G INC	SY	5
COPAVIN	LILLY ELI & CO	CA	3
COPHENE-S	DUNHALL PHARM INC	SY	5
COPROBATE	COASTAL PHARM CO	PW	4
CORDANYL	CORD LABS INC	LQ	5
CORRECTIVE MIXTURE WITH PAREGORIC	BEECHAM MASSENGILL	LQ	5
CORTANE DC EXPECTORANT	VARIOUS	LQ	5
CORTUSS A C	VARIOUS	LQ	5
CORY-EZE	BIO-FACTOR LABS	TB	3
COSINILCO W CODEINE	VARIOUS	LQ	4
COSINILCO-D	BARRE DRUG CO	SY	5
COTUSS A.C.	COOPER DRUG CO	LQ	5
COTUSSIS	MERRELL NATIONAL LAB	SY	5
COUGH & CORYZA	QUAKER CITY PHARM CO	CA	3
COUGH MEDICINE SY 402N	MAGNA INC	SY	5
COUGH SYRUP W CODEINE	VARIOUS	SY	5
CROUP	PHILADELPHIA CAPS CO.	CA	3
CUM-BU-BARS	CUMBERLAND PHARM.	TB	3
CYCLOPAGANE	GANE'S CHEMICAL WKS	BE	3
CYLERT	ABBOTT LABS	TB	4
D			
D-ASMA	DUNHALL PHARM INC	TB	3
D-ASMA-S	DUNHALL PHARM INC	SY	3
D-CAPS	HALSOM DRUG COMPANY	CA	3
D-LYSERGIC ACID	SIGMA CHEM CO	PW	3
D-BEX	BUCKSTUHL COMPANY	CA	4
D-BEX W APAP	BUCKSTUHL COMPANY	TB	4
D-BEX 45 COMPOUND	BUCKSTUHL COMPANY	CA	4
D-TUSS	MICHIGAN PHARM.	LQ	3
DAL TUSSIN	LASER INC	LQ	5
DALATUSSIN WITH CODEINE	DAYLIN MED AND SURG.	LQ	5
DALMANE	ROCHE LABS	CA	4
DAMASON P	VARIOUS	TB	3
DANA-TUSS	FRIENDLY PHARMACY	LQ	5
DANSPAN	DANIELS PHARM	XC	3
DANTAL 1/4 & 1/2	DANIELS PHARM	TB	3
DARTANE DC EXPECTORANT	ROSOW DAVID A INC	LQ	5
DARVOCET-N	LILLY ELI & CO	TB	4
DARVON	LILLY ELI & CO	CA	4
DARVON COMPOUND	LILLY ELI & CO	CA	4
DARVON COMPOUND-45	LILLY ELI & CO	CA	4
DARVON WITH A.S.A.	LILLY ELI & CO	CA	4
DARVON-N	LILLY ELI & CO	SS	4
DARVON-N W A.S.A.	LILLY ELI & CO	TB	4
DASENO	BAKER W F DRUG CO	CA	3
DECONGESTANT	INTERSTATE DRUG EXCH	SY	5
DECONGESTANT ANTITUSSIVE	VARIOUS	LQ	5
DECONGESTANT DH	VARIOUS	LQ	5
DECONGESTANT EXPECTORANT	VARIOUS	LQ	5
DEHIST EXPECTORANT MODIFIED	GENEVA GENERICS	LQ	5
DEKA EXPECTORANT	WINTHROP LABS	SY	5
DELCOCAPS	DELCO CHEMICAL	XC	3
DELCOZINE	DELCO CHEMICAL	TB	3
DELGESIC #3	DELTA DRUG (LAJ)	CA	3
DEPLETITE	TUTAG PHARMACEUTICAL	TB	4
DEPROL	VARIOUS	TB	4
DERFUL	VARIOUS	CA	3
DESA-HIST	VARIOUS	LQ	5
DESABAM	VARIOUS	TB	4
DETUSS	WOLINS PHARM CORP	LQ	3
DETUSSIN	VARIOUS	LQ	3
DEXTROSE WITH CHLORAL HYDRATE	AMCO DRUG PRODUCTS	U	4

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
DI-AP-TROL	FOY LABS INC.	TB	3
DI-METREX	FELLOWS MED MFG CO	TB	3
DI-TUSS	BO-MISE COMPANY	LQ	3
DIABISMUL	O'NEAL JONES FELDMAN	TB	3
DIALYLBARBITURIC ACID	SIGMA CHEM CO	BL	3
DIALYLBARBITURIC ACID	GANE'S CHEMICAL WKS	BL	3
DIAMULSIN IMPROVED	VALE CHEMICAL CO	LQ	3
DIAR-CHEX	P AND S APOTHECARY	LQ	3
DIARRAN	QUAKER CITY PHARM CO	CA	3
DIARRHEA	PHYSICIANS SUPPLY	TB	3
DIARRHEA AND STOMACH MEDICINE	MAGNA INC	LQ	3
DIASCAPHEN	VARIOUS	TB	3
DIASLAY	ELDER P B COMPANY	TB	3
DIAZACHEL	RACHELLE LABS	CA	4
DIAZAREX	ECONO RX INC	CA	4
DIAZEPAM	CAMALI COMPANY	TB	4
DICOCIL	MEDCO SUPPLY CO	LQ	3
DICODENOL	HEALTHCO	LQ	3
DICOPHEN VC EXPECTORANT W CODEINE	MEDCO SUPPLY CO	LQ	3
DIDRATE	THOMAS PHARM	TB	3
DIDRATE	THOMAS PHARM	CA	3
DIDREX	UPJOHN CO	TB	3
DIETHYLPROPION	VARIOUS	PW	4
DIETHYLPROPION	VARIOUS	TB	4
DIETHYLPROPION	VARIOUS	CA	4
DINHISTINE	JACOBE DRUG EXCHANGE	LQ	3
DINHISTINE DH	VARIOUS	EL	3
DINHISTINE EXPECTORANT	VARIOUS	LQ	3
DIKETANE EXPECTORANT DC	ROBINS A H CO INC	LQ	3
DIPENTOL	DIAMOND LABS	U	3
DIPHENATOX	RUGBY LABORATORIES	LQ	3
DIPHENATOX	RUGBY LABORATORIES	TB	3
DIPHENOXYLATE COMPOUND	SHERATON LABS INC	TB	3
DIPHENOXYLATE W ATROPINE	VARIOUS	PW	3
DIPHENOXYLATE W ATROPINE	VARIOUS	TB	3
DITUSS PLUS	BO-MISE COMPANY	LQ	3
DIXAHIST DH	DIXON-SHANE INC	EL	3
DIXAHIST EXPECTORANT	DIXON-SHANE INC	LQ	3
DIXON'S BUTABARB	DIXON-SHANE INC	EL	3
DIZINE	TRACY PHARMACAL CO	TB	3
DIZINE T.D.	TRACY PHARMACAL CO	XC	3
DO TABS	OXFORD PHARM	TB	3
DOCAPS	VARIOUS	CA	3
DOCRA VC EXPECTORANT WITH CODEINE	DOCRA PHARM CO	LQ	3
DOENTA	VARIOUS	TB	3
DOENTA WITH DOVERS POWDER	QUEEN CITY PHARMACAL	CA	3
DOLACET	HAUCK W E INC	TB	4
DOLAFORT	VISTA LABS	TB	3
DOLENE	LEDERLE LABORATORIES	CA	4
DOLENE AP-65	LEDERLE LABORATORIES	TB	4
DOLENE COMPOUND-65	LEDERLE LABORATORIES	CA	4
DOLMAR	MARLOP PHARM INC	CA	3
DOLIBAL	PROGRESSIVE ENTER	TB	3
DONAVANCE PG	ADVANCE DRUG	LQ	3
DONNAGEL PG	ROBINS A H CO INC	SS	3
DOPHOBIN	HEALTHCO	TB	3
DORER	BUCKSTUNE COMPANY	CA	3
DORIDEN	VARIOUS	TB	3
DORMTABS	SPENCER-MEAD INC	TB	3
DOTABS	CALDWELL & BLOOR CO	TB	3
DOUBLE-PHEN LAYTABS	TRUXTON C O INC	TB	3
DOV-ASPIRIN	PHYSICIANS SUPPLY	CA	3
DOVACET	VALE CHEMICAL CO	CA	3
DOVACIN	VARIOUS	CA	3
DOVALGIN	MOFFET INC	TB	3
DOVAMIDE	PHILIPS ROXANE LABS	CA	3
DOVAMOR	MOORE KIRK LABS	TB	3
DOVAVAL	MOORE KIRK LABS	TB	3
DOVENEL	HARNEL PHARM COMPANY	CA	3
DOVERAM	VARIOUS	CA	3
DOVERAM	VARIOUS	TB	3
DOVERIN	VARIOUS	CA	3
DOVERLYN	SCRIP INC	TB	3
DOVERLYN	SCRIP INC	CA	3
DOVERNON	TUTAG PHARMACEUTICAL	CA	3
DOVERS AP	BUCKWALTER DRUG CO	TB	3

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
DOVERS CAPSULE	VARIOUS	CA	3
DOVERS COMPOUND	LAMPERT PHARMACAL CO	CA	3
DOVERS COMPOUND	LAMPERT PHARMACAL CO	TB	3
DOVEX	VARIOUS	TB	3
DOVOSAL	VARIOUS	TB	3
DRI-PHED-C EXPECTORANT	STAYNER CORPORATION	LQ	3
DROKEMAS (MODIFIED)	TRUXTON C O INC	TB	4
DRUCON WITH CODEINE	STANDARD DRUG PROD	LQ	3
DURADYNE DHC	O'NEAL JONES FELDMAN	TB	3
DYSENAID JR	JENKINS LABS INC	TB	3
E			
ECONOBARS	ECONO RX INC	EL	3
EFED	ALTO PHARM INC	TB	3
EFFICON EXPECTORANT	LANNETT CO	LQ	3
EKRISD	MALLARD INC	TB	3
ELDONAL-S	CANRIGHT CORP	TB	3
ELIXIR FENOBARBITAL F.E.U.	SEIN MENDEZ LABS	EL	4
ELIXED	NORTH AMERICAN PHARM	LQ	4
EME-NIL	THERA-MEDIC	SU	3
EMESERT 1,2,3	ARNAR-STONE LABS	SU	3
EMONIL	RHODE J G INC	TB	3
EMONIL	RHODE J G INC	LQ	3
EMPARAB	EMPIRE PHARM INC	TB	4
EMPIRIN COMPOUND W CODEINE	VARIOUS	TB	3
EMPIRIN W CODEINE	VARIOUS	TB	3
EMPRACET W CODEINE NO 3	BURROUGHS WELLCOME	TB	3
EMPRAZIL-C	BURROUGHS WELLCOME	TB	3
ENDAL EXPECTORANT	UAD LABS	LQ	3
ENDAL-HD	UAD LABS	LQ	3
ENDOTUSSIN-C	ENDO LABS INC	LQ	3
ENOKA	TUTAG PHARMACEUTICAL	TB	3
ENTAL	ALLISON LABS	TB	3
ENTAL	ALLISON LABS	EL	3
ENTUSS	HAUCK W E INC	TB	3
ENTUSS EXPECTORANT	HAUCK W E INC	LQ	3
EPHEDRINE AND AMYTAL	LILLY ELI & CO	CA	3
EPHEDRINE AND SECONAL	LILLY ELI & CO	CA	3
EPHEDRINE SULFATE AND AMOBARBITAL	KASAR LABORATORIES	CA	3
EPHEDROL WITH CODEINE	LILLY ELI & CO	SY	3
EPRAGEN	LILLY ELI & CO	CA	3
EPROSPAN	VARIOUS	XC	4
EQUAGEN	GRAFTON PHARM	TB	4
EQUAGESIC	WYETH LABORATORIES	TB	4
EQUANIL	VARIOUS	TB	4
EQUANIL	VARIOUS	SS	4
EQUANIL	VARIOUS	CA	4
EQUISED	BURNS BIOTEC	U	4
EQUISED (VET)	BURNS VETERINARY	U	4
ERASEN	WINSTON PHARMACAL	TB	4
ESKABARB	SWITH ELINE FRENCH	XC	4
ETHICLORETHOL	ABBOTT LABS	BL	4
EUTHANASIA (VET)	VARIOUS	SL	3
EUTHANASIA (VET)	VARIOUS	U	3
EVENOL	DELTA DRUG (FLA)	TB	4
EX-OBES	KAY PHARMACAL CO	TB	3
EXPEC-C	LEXLABS INC	SY	3
EXPECTICO	COASTAL PHARM CO	SY	3
EXPECTORANT COMPOUND SYRUP	LANNETT CO	SY	3
EXPECTORANT MIXTURE	BARRE DRUG CO	LQ	3
F			
F M 200	FEDERAL PHARM CORP	TB	4
F M 400	FEDERAL PHARM CORP	TB	4
FASTIN	BEECHAM-MASSENGILL	CA	4
FEBRIDYNE 2,3,4	LANDRY PHARM INC	CA	3
FELLO-SED	FELLOWS MED MFG CO	EL	4
FELSULES	FELLOWS MED MFG CO	CA	4
FENALEAF	ORMONT DRUG & CHEM	TB	4
FENBUTAL	TUTAG PHARMACEUTICAL	CA	3
FENFLURAMINE HYDROCHLORIDE	HEXAGON LABS	BL	4
FENOBARBITAL	SEIN MENDEZ LABS	TB	4

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
FEHOBARBITAL SODICO	LABORATORIOS TERRIER	IJ	4
FEOMED	VARIOUS	CA	3
FIBETAL	HALSEY DRUG COMPANY	TB	3
FIORER	RUCKSTUHL COMPANY	TB	3
FIORGEN	GENEX DRUG CORP.	CA	3
FIORGEN	GENEX DRUG CORP.	TB	3
FIORNAL	VARIOUS	CA	3
FIORNAL	VARIOUS	TB	3
FIORNAL W/ CODEINE	SANDOZ PHARM.	CA	3
FIORLEN	LEN-TAG COMPANY	TB	3
FIORMOR	MOORE DRUG EXCHANGE	TB	3
FIORMOR	MOORE DRUG EXCHANGE	CA	3
FIOSAL	MEDCO SUPPLY CO.	TB	3
FLOTTUSSIN-AM	FOREST HILL PHARM.	LQ	4
FO-MATE	SCRIP INC.	TB	3
FOR-TABS	UNITED RESEARCH LABS.	TB	3
FORBUTOL	INDIANAPOLIS PHARM.	CA	3
FORCOLD	LEMMON PHARMACAL CO.	LQ	3
FORPANE WITH CODEINE	MICHIGAN PHARM.	CA	3
FORTECROUP	QUAKER CITY PHARM CO.	CA	3
FOURSED SPECIAL 1620	VALE CHEMICAL CO.	TB	3
FOY-HUX	FOY LABS INC.	TB	4

G

G-3	PALMEDICO INC.	CA	3
G-3	PALMEDICO INC.	TB	3
GEMOHIL	ABBOTT LABS.	TB	3
GEN-S-COUGH	CORD LABS INC.	SY	5
GENAGESIC	GENEX DRUG CORP.	TB	4
GENALUDE	GENEX DRUG CORP.	TB	3
GESIC	LEXALABS INC.	TB	3
GG-TUSSIN CF	VITABINE CO INC.	SY	5
GLUTETHAMIDE	VARIOUS	TB	3
GLUTETHAMIDE	VARIOUS	PW	3
GLYCERYL GUAIACOLATE	INTERSTATE DRUG EXCH.	LQ	5
GLYCERYL GUAIACOLATE AC	FATON PHARM INC.	LQ	5
GLYCERYL GUAIACOLATE W/ CODEINE	FATON PHARM INC.	LQ	5
GLYCOTUSSIN WITH CODEINE	PREMO PHARM LABS INC.	LQ	5
GODFREYS CORDIAL	VAH FLEET LABS.	LQ	3
GOLACOL	VARIOUS	SY	5
GREENBAR-ONE-TWO	FREEPORT DRUG CO.	TB	4
GUAIACOL COMPOUND (GREEN)	LAMPERT PHARMACAL CO.	TB	3
GUAIATRATE	BOWMAN PHARMACEUTIC	LQ	5
GUAIAPHENESIN SYRUP W/ CODEINE	KAISER FOUND. HOSP.	SY	5
GUAMID A.C.	VARIOUS	LQ	5
GUATUSS A.C.	VARIOUS	LQ	5
GUATUSS W/ CODEINE	ROSOW DAVID A INC.	LQ	5
GUATUSSIN A.C.	SPENCER-MEAD INC.	SY	5
GUATUSSIN W/ CODEINE	RUGBY LABORATORIES	LQ	5
GUOSIAN W/ MORPHINE SULFATE	VALE CHEMICAL CO.	SY	3
GYLATE-C	MEDICAL SPECIALTIES	LQ	5

H

HARGESIC	HABERLE DRUG COMPANY	TB	4
HAMMONDS MIXTURE W/ PB SODIUM	IOWA UNIVERSITY	LQ	4
HANA-TUSSIN W/ CODEINE	VARIOUS	SY	5
HANAPHEN ELIXIR	HANCE BROS & WHITE	EL	4
HARSELPHEN	MODERN DRUG COMPANY	TB	4

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
HARLECO-BARBITAL BLEND	GANE'S CHEMICAL WKS.	BL	4
HENOMINT	BOWMAN PHARMACEUTIC	EL	4
HENOTAL	BOWMAN PHARMACEUTIC	EL	4
HENOTAL	BOWMAN PHARMACEUTIC	TB	4
HEXOBARBITAL	VARIOUS	PW	3
HISTA DERFULE	VARIOUS	CA	3
HISTA-DOREX	RUCKSTUHL COMPANY	CA	3
HISTADYL EC	LILLY ELI & CO.	SY	3
HISTAFED-C EXPECTORANT	LIFE LABORATORIES	LQ	5
HISTANEL PLUS	HARNEL PHARM COMPANY	SY	5
HISTAWOL	WOLINS PHARM CORP.	LQ	5
HISTCODIN	TRUXTON C O INC.	SY	5
HISTINE DH	SHERATON LABS INC.	EL	5
HISTINE EXPECTORANT	SHERATON LABS INC.	LQ	5
HOMEOPATHIC TABLETS NO 93	BOERICKE AND TAFEL	TB	4
HOURBESE	CORD LABS INC.	CA	4
HY-SED	CALDWELL & BLOOR CO.	CA	4
HYBAR	JENKINS LABS INC.	TB	4
HYCOBROM	BLAINE COMPANY	LQ	4
HYCODAN	VARIOUS	LQ	3
HYCODAN	ENDO LABS INC.	TB	3

HYCOFF	SARON PHARMACAL CORP.	SY	3
HYCOMINE	VARIOUS	SY	3
HYCOMINE COMPOUND	ENDO LABS INC.	TB	3
HYCOTUSS EXPECTORANT	ENDO LABS INC.	SY	3
HYDRO-PROPAMOLAMINE SYRUP	SCHEN HENRY INC.	LQ	3
HYDROCODONE SYRUP	SCHEN HENRY INC.	LQ	3
HYOBARS	HABERLE DRUG COMPANY	TB	4
HYPASEN	QUEEN CITY PHARMACAL	TB	4
HYPHENAL	BLAINE COMPANY	TB	4
HYTRVALS	PHYSICIANS SUPPLY	TB	4

HYPHETTE	VARIOUS	TB	4
HYPTAH	VARIOUS	TB	3

I-PAC	SPENCER-MEAD INC.	CA	3
I-PAC	SPENCER-MEAD INC.	TB	3
ICH 65 COMPOUND	ICH PHARMACEUTICALS	CA	4
IDENAL	INTERSTATE DRUG EXCH.	TB	3
IMODIUM	ORTHO PHARMACEUTICAL	CA	5
INACTIN	ABBOTT LABS.	BL	3
INFADORM DROPS	REID-PROVIDENT LABS	DP	4
INFASEASE	TB-STATE PHARM.	LQ	4
INFANTOL PINK	FIRST TEXAS PHARM.	LQ	5
IODIZEM COMP.	ZEMMER CO INC.	LQ	5
IONAKRAFT	KRAFT PHARMACEUTICAL	TB	4
IONAKRAFT-G8	KRAFT PHARMACEUTICAL	XC	4
IONAMIN	VARIOUS	CA	4
IONAPAR	PARMED PHARM.	XC	4
IOPHED	MARSH-ENROY LABS	SY	4
IP-44	BELL GEO M CHEMISTS	TB	3
IP-77	BELL GEO M CHEMISTS	TB	3
ISOBARS	THREE P PRODUCTS	TB	3

ISOBARS	BARRE DRUG CO.	TB	3
ISOBARS AND APC	VARIOUS	TB	3
ISOBUTAL TABLETS	SCHEN HENRY INC.	TB	3
ISOCLOE EXPECTORANT	ABNAR-STONE LABS	EL	5
ISOLLY	RUGBY LABORATORIES	TB	3
ISOHAL	BORNEMAN & SONS	TB	3

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
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J

J.A.P.C. W CODEINE PHOSPHATE	J-PHARMACAL CO	TB	3
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K

K-N-S	KING PHARMACEUTICAL	EL	4
K-PEC WITH PAREGORIC	BEVERLY MEDICAL SUP.	LQ	5
K-PHEN EXPECTORANT WITH CODEINE	KAY PHARMACAL CO	SY	5

KA-THAL-PEC	O'NEAL JONES FELDMAN	SS	5
KA-THAL-PEC (IMPROVED FORMULA)	WESTERFIELD LABS	SS	5
KALMEX C EXPECTORANT	RISTER LABORATORIES	LQ	5
KALMA	SCRIP INC	TB	4
KAMAGEL	TOWNE PAULSEN & CO	SS	5
KAO-GORIC	HANCE BROS & WHITE	LQ	5
KAOCAP	TAYLOR LABORATORIES	CA	5
KAOGENE	PREFFER CO	LQ	5
KAOONNA P G	VARIOUS	LQ	5
KAOGORIC	WESLEY PHARMACAL CO	TB	3

KAOGORIC	ADCO PHARM	LQ	5
KAOLIN-PECTIN W PAREGORIC	VARIOUS	LQ	5
KAOLINPEC W PAREGORIC	TRUXTON C O INC	LQ	5
KAOHEAD P G	SPENCER-HEAD INC	LQ	5
KAOBAR	HALSEY DRUG COMPANY	LQ	5
KAOBARIN W PAREGORIC	MCKESSON LABS	SS	5
KAOPIHEN	VALE CHEMICAL CO	TB	4
KAOSED	STANDARD DRUG PROD	LQ	5
KAOIN P G	ECONOMY RX INC	LQ	5
KAPCTOLIN W PAREGORIC	VARIOUS	LQ	5

KAPINAL	JENKINS LABS INC	TB	3
KAPPAGESIC	TRI COUNTY PHARMACAL	CA	3
KAYON-65	KAY PHARMACAL CO	CA	4
KBP/O (REVISED)	COLE PHARMACAL CO	CA	3
KENPECTIN-P	KENWOOD LABS INC	SS	5
KEOPARIC	BLUE LINE CHEM CO	LQ	5
KESSE-BAMATE	MCKESSON LABS	TB	4
KESSEORATE	MCKESSON LABS	CA	4
KESSEORATE SYRUP	MCKESSON LABS	SY	4
KLEER EXPECTORANT	SCRIP INC	LQ	5

KOBAC	ZEMMER CO INC	TB	3
KOLCAPS W DOVERS POWDER	TRUXTON C O INC	CA	3
KOLPHIBIN W CODEINE	PREFFER CO	LQ	5
KONEL W CODEINE	PREFFER CO	TB	5
KOTABARS	WESLEY PHARMACAL CO	TB	4

L

LANIBOP	TRUXTON C O INC	TB	3
LANOBINAL	LANNETT CO	CA	3
LANOBINAL	LANNETT CO	TB	3
LANIOTINE WITH CODEINE	LEMMON PHARMACAL CO	TB	3
LEMO-7P	PIGSAH PHARM	TB	3
LEN 30, 105 & 500	LEN-TAG COMPANY	CA	3
LEN-22	LEN-TAG COMPANY	TB	3

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
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LESSTEN	TRI STATE PHARM	TB	3
LESTENSE	SHERRY PHARM CO	TB	3
LIBRITABS	VARIOUS	TB	4
LIBRIUM	ROCHE LABS	CA	4
LIBRIUM	ROCHE LABS	CA	4
LIBRIUM	S & G DISTRIBUTORS	CA	4
LIBMITROL 10-25	ROCHE LABS	TB	4
LIMIT	BOCK PHARMACAL CO	TB	3

LIQUIX-C	ELDER P B COMPANY	CA	3
LQ-CAL 35	LEN-TAG COMPANY	TB	3
LO-TABS	PARMED PHARM	TB	5
LO-TROL	VANGARD LABS	TB	5
LO-TROL	VANGARD LABS	LQ	5
LO-WATE	PHARMECON INC	TB	3
LOBE-CAL	HALSOM DRUG COMPANY	TB	3
LOFENE	LANNETT CO	TB	5
LOMANATE	VARIOUS	LQ	5
LOMO-PLUS	MD PHARMACEUTICAL	TB	5

LOMOTIL	VARIOUS	TB	5
LOMOTIL	VARIOUS	LQ	5
LONOX LIQUID	GENEVA GENERICS	LQ	5
LORCET W APAP	UAD LABS	TB	4
LOREX	BUCKSTUNE COMPANY	TB	5
LORYL	KREMERS URBAN CO	CA	4
LOTUSATE	WINTHROP LABS	TB	3
LOW-QUEL	HALSEY DRUG COMPANY	TB	5
LULI	VARIOUS	TB	3
LUMINAL OVOIDS	WINTHROP LABS	TB	4

LUMINAL SODIUM	WINTHROP LABS	LJ	4
LYCORAL	FELLOWS MED MFG CO	LQ	4

M

M-PHEN	MCNEIL R A CO	LQ	5
M-POXIDE	MICHIGAN PHARM	CA	4
MAGNADENE DIARRHEA AND STOMACH MEDICINE	MAGNA INC	LQ	5
MALLERGAN	MALLARD INC	LQ	5
MAR-COF	MARNEL PHARM INC	LQ	5
MARGANE	NORTHROP PHARM	TB	4
MARGESIC COMPOUND 65	NORTH AMERICAN PHARM	CA	4
MARGESIC IMPROVED	NORTH AMERICAN PHARM	CA	4

MARGESIC NO.3	MARNEL PHARM INC	TB	3
MARNAL	NORTH AMERICAN PHARM	TB	3
MARTABS	CALDWELL & BLOOR CO	TB	4
MARUATE	NORTH AMERICAN PHARM	TB	4
MAXIGESIC	MERCHANT W F	CA	3
MEBARAL	WINTHROP LABS	TB	4
MEBROIN	WINTHROP LABS	TB	4
MEBROIN-V	WINTHROP LABS	TB	4
MED-TAKE D C EXPECTORANT	MEDWICK LABS INC	SY	5
MEDA-HIST DH	MEDWICK LABS INC	SY	5

MEDA-HIST EXPECTORANT	MEDWICK LABS INC	LQ	5
MEDA-TUSS AC	MEDWICK LABS INC	SY	5
MEDAHISTINE-D	MEDCO SUPPLY CO	LQ	5
MEDCOHIST W CODEINE	PALMEDICO INC	TB	3
MEDI-BARB (BUTABARB 500)	SPENCER-HEAD INC	EL	3
MEDIATRIC	AYERST LABORATORIES	TB	3
MEDIATRIC	AYERST LABORATORIES	CA	3
MEDIATRIC	AYERST LABORATORIES	LQ	3
MEDIGESIC PLUS	VARIOUS	CA	3
MEDITUSSIN	PALMEDICO INC	LQ	3

MEDITUSSIN-X	PALMEDICO INC	LQ	5
MEDTRADINE	MERCON INDUSTRIES	TB	3
MELFIAT	REID PROVIDENT LABS	TB	3

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
MEPHOBARBITAL	VARIOUS	TB	4
MEPHOBARBITAL	VARIOUS	PW	4
MEPHOMAB	HABERLE DRUG COMPANY	TB	4
MEPHORAL	CANFIELD AND CO	TB	4
MEPRUM	LEMMON PHARMACAL CO	TB	4
MEPRO	VARIOUS	TB	4
MEPROBAMATE	VARIOUS	PW	4
MEPROBAMATE	VARIOUS	TB	4
MEPROBANE	LINDEN LABORATORIES	TB	4
MEPROBEN-A	RUGBY LABORATORIES	TB	4
MEPROCHLOZINE	SHERRY PHARM CO	TB	4
MEPROCON CMC	CONSOLIDATED MIDLAND	TB	4
MEPRODAN	DANIELS PHARM	TB	4
MEPRONEL	HARNEL PHARM COMPANY	TB	4
MEPROTIL	BRUNER-TILLMAN CO	TB	4
MEPROZINE	MIDWAY MEDICAL CO	TB	4
MEPTYZINE	ROBINSON LABORATORY	TB	4
MERCODOL WITH DECAPRYN	MERRELL NATIONAL LAB	SY	5
MERIBAM	MERIT PHARM CO	TB	4
MERPRUM	LEMMON PHARMACAL CO	TB	4
METHARBITAL	ABBOTT LABS	BL	3
METHAZINE V C EXPECTORANT W CODEINE	VARIOUS	LQ	5
METRA	O'NEAL JONES FELDMAN	TB	3
METROGEC # 2 & # 3	METRO MED INC	TB	3
MIDAHIST DH	VARIOUS	LQ	5
MIDAHIST EXPECTORANT	VARIOUS	LQ	5
MILTOWN	WALLACE LABORATORIES	TB	4
MINTO-CHLOR W CODEINE SULFATE	VALE CHEMICAL CO	SY	5
MINUS	FEDERAL PHARM CORP	TB	3
MISTURA BISMUTH & SALOL W OPIUM	VARIOUS	SS	5
MONACET WITH CODEINE	REXALL DRUG CO	TB	5
MOTILATE	WOLINS PHARM CORP	TB	5
MOULTONS DIARRHEA MIXTURE	MOULTONS DRUGS	LQ	5
MOULTONS PAIN RELIEVERS	MOULTONS DRUGS	TB	5
MUL-SED	WEBER PHARM	SS	5
MURCIL	TUTAG PHARMACEUTICAL	CA	4
MYOCARS	PHILADELPHIA CAPS CO	CA	4
MYOLATE	AMFBE GRANT INC	TB	3
MYOTHESIA	BEECHAM-MASSENGILL	U	3
MYTRANS	QUEEN CITY PHARMACAL	TB	4
N			
NALLINE	MERCK & CO INC	U	3
NALLA-PRIME HCL	MERCK & CO INC	PW	3
NAPAP # 2 & # 3	ROBINSON LABORATORY	TB	3
NAPAP WITH CODEINE	ROBINSON LABORATORY	EL	5
NASCOBABB	MAYRAND PHARM INC	TB	4
NASCOBABB OVALETS	MAYRAND PHARM INC	TB	4
NAUTOLO	REID-PROVIDENT LABS	SU	3
NEMBU-DONNA 1/2	ABBOTT LABS	CA	3
NEMBUTAL	VARIOUS	SU	3
NEOCURB	PASADENA RESEARCH	TB	3
NEOCURB/TDC BROWN/CLEAR	PASADENA RESEARCH	XC	3
NEOREXIAN	CALDWELL & BLOOR	TB	3
NEOTUSS W CODEINE	WESTERFIELD	LQ	5
NEOTUSSIN	MOFFET INC	SY	5
NEOZYL	TUTAG PHARMACEUTICAL	LQ	5
NEURAMATE	HALEY DRUG COMPANY	TB	4
NEURATE 400	TRIMEN LABS	TB	4
NEUROVAL	VALE CHEMICAL CO	EL	4
NEVROTOSE # 2 & # 3	VALE CHEMICAL CO	TB	4
NI-TABS	BOWMAN PHARMACEUTIC	TB	4
NIPRIN	ELDER P & COMPANY	CA	3
NIRATANE-DC EXPECTORANT	PROGRESS LABS	LQ	5
NOCITEC	SQUIBB & SONS	SY	4
NOCITEC	SQUIBB & SONS	CA	4
NOLUDAR	VARIOUS	TB	3
NOLUDAR	VARIOUS	CA	3
NOR-MIL	NORTH AMERICAN PHARM	TB	5
NORATUSS	NORTH AMERICAN PHARM	LQ	5
NORCET	THERA-MEDIC	TB	3
NORMATANE DC	NORTH AMERICAN PHARM	LQ	5
NORMATANE DC EXPECTORANT	NORTH AMERICAN PHARM	SY	5
NOVACAPS 75	THOMAS PHARM	XC	4
NOVAHISTINE DH	DOW CHEMICAL CO	LQ	5

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
NOVAHISTINE EXPECTORANT	DOW CHEMICAL CO	LQ	5
NOVATABS	THOMAS PHARM	TB	4
NOVATUSS EXPECTORANT	BLAINE COMPANY	LQ	5
NOXYTIL	ARLO INTERAMERICAN	TB	5
NOXYTIL	ARLO INTERAMERICAN	LQ	5
NUCOPED	BEECHAM-MASSENGILL	SY	3
NUCCOF-PM	NOTES P J CO	SY	3
NUXAPHEN	O'NEAL JONES FELDMAN	TB	4
NW G.O.Y WEIGHTROL	WESTERN RESEARCH LAB	TB	3
NYGAN EXPECTORANT WITH CODEINE	WILL-STAN PRODUCTS	LQ	5
NYGAN V.C. EXPECTORANT WITH CODEINE	WILL-STAN PRODUCTS	LQ	5
O			
O.B.C.T.	PHARMICS INC	XT	4
OBACIN	KENTON DRUG CO	TB	3
OBALAN	LANNETT CO	TB	3
OBE-DEL	MARLOP PHARM INC	CA	3
OBE-NIL (WHITE AND SEEDS)	THERA-MEDIC	TB	3
OBE-NIL TB (RED & YELLOW)	THERA-MEDIC	XC	3
OBE-NIL	THERA-MEDIC	CA	4
OBECAPS	THOMAS PHARM	CA	4
OBEFAR	PARMED PHARM	TB	3
OBESEHEAD	SPENCER-HEAD INC	XC	4
OBE TABS-B	THOMAS PHARM	TB	4
OBEVAL	VALE CHEMICAL CO	TB	3
OBEZINE	WESTERN RESEARCH LAB	TB	3
OBEZINE GREEN	WESTERN RESEARCH LAB	TB	3
OBEZINE ORANGE	WESTERN RESEARCH LAB	TB	3
OBEZINE YELLOW	WESTERN RESEARCH LAB	TB	3
OMMBABB	DELTA DRUG (FLA)	TB	4
OMNI-TUSS	PENNYWALT PRODUCTS	SS	5
OMNIBESE	DELTA DRUG (FLA)	TB	3
OMNIGESIC-C	DELTA DRUG (FLA)	CA	3
ONA-MAST	MAST M M COMPANY	XC	4
ONA-MAST	MAST M M COMPANY	TB	4
OPETO ELIXIR	BOWMAN PHARMACEUTIC	EL	5
OR ORASATE (LIGHT BLUE)	WESTERN RESEARCH LAB	TB	3
ORADRATE	COAST LABS	CA	4
ORBIGESIC WITH CODEINE PHOSPHATE	ORBIT PHARMACEUTICAL	TB	3
ORBIHISTINE DH	ORBIT PHARMACEUTICAL	EL	5
ORBIHISTINE EXPECTORANT	ORBIT PHARMACEUTICAL	LQ	5
ORBIHISTINE EXPECTORANT	ORBIT PHARMACEUTICAL	LQ	5
ORBIHISTINE V.C. EXPECTORANT	ORBIT PHARMACEUTICAL	LQ	5
OVAMID	CALDWELL & BLOOR CO	TB	3
OXAZEPAM	PHARMACY SERVICE CEN	CA	4
P			
P B TABLETS	VARIOUS	TB	4
P H TABLETS	VARIOUS	TB	4
P-M-P EXPECTORANT	MERCON INDUSTRIES	LQ	5
P-M-Z HCL EXPECTORANT W CODEINE PHOSPHATE	SUTLUFF & CASE	SY	5
P-V-TUSSIN	REID-PROVIDENT LABS	LQ	3
P-V-TUSSIN	REID-PROVIDENT LABS	TB	3
PABIZOL WITH PAREGORIC	REXALL DRUG CO	LQ	5
PAC COMPOUND W CODEINE SULFATE	UPJOHN CO	TB	3
PAC COMPOUND W CODEINE SULFATE	UPJOHN CO	TB	3
PACORAL	JONES AND VAUGHAN	CA	3
PAIN TABS	VARIOUS	TB	3
PALGESIC	PAN AMERICAN LABS	CA	3
PALGESIC	PAN AMERICAN LABS	TB	3

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
PALCO	MOORE KIRK LABS.	TB	4
PAMINE PB	UPJOHN CO.	DP	4
PAN-BIS-CAL WITH PAREGORIC	NOYES P J CO.	LQ	3
PANBUTAL	PAN AMERICAN LABS	TB	3
PANBUTAL	PAN AMERICAN LABS	EL	3
PANBUTAL	PAN AMERICAN LABS	CA	3
PANEX NO 1/2	VARIOUS	CA	3
PANIVON	WESLEY PHARMACAL CO.	CA	4
PANPHENO TP	PAN AMERICAN LABS	XC	4
PANQUE	PAN AMERICAN LABS	TB	4
PANBETOL-M (PINK)	PAN AMERICAN LABS	TB	3
PANBETOL-M TP	PAN AMERICAN LABS	XC	3
PAPADEINE NO 3 (PAPADINE)	VANGUARD LABS	TB	3
PAR 5 W CODEINE	PARMED PHARM	TB	3
PAR-LB 5, 10, 25	PARMED PHARM	CA	4
PARA-HIST	PHARMICS INC.	SY	5
PARAKRAFT	KRAFT PHARMACEUTICAL	TB	3
PARAL (PARALDEHYDE)	FELLOWS MED MFG CO.	CA	4
PARAL AMPULES	CHROMALLOY PHARM INC.	LI	4
PARAPIN	PARAMOUNT SURG SUPP.	TB	3
PARATUSSIN A.C.	PARAMOUNT SURG SUPP.	SY	5
PAREGORIC	VARIOUS	TB	3
PAREGORIC	VARIOUS	LQ	3
PAREGORIC AND SODA COMPOUND	VALE CHEMICAL CO.	TB	3
PARELIXER	VARIOUS	EL	5
PAREPECTOLIN	ROBER INC.	LQ	5
PARGESIC COMPOUND 65	PARMED PHARM	CA	4
PARGESIC 65	PARMED PHARM	CA	4
PARHISTINE DH MODIFIED	PARMED PHARM	LQ	5
PARMINE	PARMED PHARM	CA	4
PARPECK MIX	FORT DAVID LABS	LQ	5
PARPECTATE P.G.	PARMED PHARM	LQ	5
PARTUSS A.C.	PARMED PHARM	SY	5
PARZINE PM CT YELLOW	LANPAR COMPANY	TB	3
PASA-PHAT	INDIANAPOLIS PHARM.	TB	4
PASRAL	PACE BOND DRUG	TB	3
PASSASED MO3	TRUXTON C O INC.	TB	4
PAVADON ELIXIR	COASTAL PHARM CO.	EL	5
PAYLOR	HEALTHCO	TB	4
PAX-400	KENTON DRUG CO.	TB	4
PBR-12	SCOTT ALISON PHARM.	XC	4
PC W CODEINE	VARIOUS	CA	3
PC W CODEINE	VARIOUS	TB	3
PECTAGORIC	VARIOUS	LQ	5
PECTALIN W PAREGORIC	CARROLL CHEM CO.	LQ	5
PECTIN KADOLIN & OPIUM	DAYLIN MED AND SURG.	LQ	5
PECTO-KALIN	DRUMMER LABS	LQ	3
PECTORAL SYRUP	LEMMON PHARMACAL CO.	LQ	3
PECTORAL SYRUP	NOYES P J CO.	SY	3
PEDI-COLD	QUAKER CITY PHARM CO.	TB	3
PEDIACOF	WINTHROP LABS	SY	5
PEDIATAP NO 2 (A.C.D.)	PHILIPS ROXANE LABS	TB	5
PEDIATRIC COUGH SYRUP	LIFE LABORATORIES	SY	5
PEDO-SOL	BOCK PHARMACAL CO.	EL	3
PEDO-SOL	BOCK PHARMACAL CO.	TB	3
PEMOLINE	ABBOTT LABS	BL	4
PEMOLINE	SIGMA CHEM CO.	PW	4
PENOTAL	COASTAL PHARM CO.	CA	3
PENTATHYN	SCRIP INC.	TB	3
PENTAZINE VC W CODEINE	CENTURY PHARM INC.	LQ	5
PENTAZINE W CODEINE	CENTURY PHARM INC.	LQ	5
PENTOBARBITAL	VARIOUS	SU	3
PENTOTHAL	ABBOTT LABS	LI	3
PERCOGESIC-C	ENDO LABS INC.	TB	3
PERICOL DC	PERRY LABS	SY	5
PERIDINE	QUEEN CITY PHARMACAL	TB	4
PHARMADOSE	PHARMACARE	EL	4
PHARMATUSSIN	PHARMECON INC.	LQ	5
PHAZTME-PB	REED & CARNICK	TB	4
PHEDRABIST	CALDWELL & BLOOR CO.	CA	3
PHEDRAZINE	KINGSBAY PHARM	TB	3
PHEDRAZINE	KINGSBAY PHARM	CA	3
PHELANTIN	PARKE-DAVIS & CO.	CA	3
PHENACETOPHEN W CODEINE	VARIOUS	CA	3
PHENACON EXCEPTORANT WITH CODEINE	ECONO RX INC.	SY	5
PHENACON VC EXCEPTORANT WITH CODEINE	ECONO RX INC.	SY	5
PHENALIX	MALLARD INC.	TB	4
PHENAMINE	KINGSBAY PHARM	TB	4

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
PHENAMINE EXCEPTORANT	PHARMECON INC.	LQ	5
PHENAMINE-C	PHARMECON INC.	LQ	5
PHENAPHEN W CODEINE	VARIOUS	CA	3
PHENATROCARB	O'NEAL JONES FELDMAN	TB	4
PHENATROCARB REVISED	WESTERFIELD LABS	TB	4
PHENAZINE	VARIOUS	CA	3
PHENAZINE	VARIOUS	TB	3
PHENDIET	TRUXTON C O INC.	TB	3
PHENDIET	SPENCER-HEAD INC.	CA	3
PHENDIET	SPENCER-HEAD INC.	TB	3
PHENDIMETRAZINE	VARIOUS	TB	3
PHENDIMETRAZINE	VARIOUS	PW	3
PHENDIMETRAZINE	VARIOUS	CA	3
PHENDOREX	WOLINS PHARM CORP.	TB	3
PHENDOREX	WOLINS PHARM CORP.	CA	3
PHENEREX EXCEPTORANT W CODEINE	BUCKSTUHL COMPANY	LQ	5
PHENEREX VC EXCEPTORANT	BUCKSTUHL COMPANY	LQ	5
PHENERGAN EXCEPTORANT W CODEINE	VARIOUS	LQ	5
PHENERGAN VC EXCEPTORANT W CODEINE	WYETH LABORATORIES	LQ	5
PHENERVANCE EXCEPTORANT W CODEINE	ADVANCE DRUG	LQ	5
PHENERVANCE VC EXCEPTORANT W CODEINE	ADVANCE DRUG	LQ	5
PHENHIST D H W CODEINE	RUGBY LABORATORIES	LQ	5
PHENHIST D.H.	RUGBY LABORATORIES	LQ	5
PHENHIST EXCEPTORANT	RUGBY LABORATORIES	LQ	5
PHENO-DONNA	MYRO PHARM INC.	TB	4
PHENO-NUX	VALE CHEMICAL CO.	TB	4
PHENO-NUX & PEPSIN PINK	WESLEY PHARMACAL CO.	TB	4
PHENOBARBITAL	VARIOUS	PW	4
PHENOBARBITAL	VARIOUS	EL	4
PHENOBARBITAL	VARIOUS	TB	4
PHENOBARBITAL	VARIOUS	SU	4
PHENOBARBITAL	VARIOUS	LI	4
PHENOBARBITAL	VARIOUS	CA	4
PHENOBARBITAL & ASPIRIN	INVENEX PHARM	TB	4
PHENOBARBITAL & BELLADONNA	VARIOUS	TB	4
PHENOBARBITAL & HYOSCYAMINE	CALDWELL & BLOOR CO.	TB	4
PHENOBARBITAL & HYOSCYAMINE	VARIOUS	TB	4
PHENOBARBITAL W BROMIDE	VARIOUS	EL	4
PHENOBESSE	TRACY PHARMACAL CO.	TB	4
PHENOMAGNEOX PINK	CALDWELL & BLOOR CO.	TB	4
PHENOSQUAR	MALLARD INC.	TB	4
PHENTERCOT T.D.	TRUXTON C O INC.	XC	4
PHENTERLOW	WESLEY PHARMACAL CO.	XC	4
PHENTERMINE	VARIOUS	PW	4
PHENTERMINE	VARIOUS	CA	4
PHENTERMINE	VARIOUS	TB	4
PHENTERSPAN	WESLEY PHARMACAL CO.	XC	4
PHENTRA	BUCKSTUHL COMPANY	TB	3
PHENTROL	NORTH AMERICAN PHARM.	TB	4
PHENTROL	NORTH AMERICAN PHARM.	CA	4
PHENTHISTINE EXCEPTORANT	LIFE LABORATORIES	LQ	5
PHENTHISTINE EXCEPTORANT MODIFIED	KAISER FOUND. HOSP.	LQ	5
PHENTHISTINE DH	LIFE LABORATORIES	LQ	5
PHENTHISTINE WITH CODEINE PHOSPHATE	DAYLIN MED AND SURG.	LQ	5
PHENZINE	MALLARD INC.	TB	3
PHERAZINE EXCEPTORANT W CODEINE	HAILEY DRUG COMPANY	LQ	5
PHERAZINE VC EXCEPTORANT W CODEINE	HAILEY DRUG COMPANY	LQ	5
PHERAZINE	CHROMALLOY PHARM INC.	TB	3
PHI-TABLET	LANPAR COMPANY	TB	4
PHITAL	PHILPHARM	TB	3
PHLEMAZIN W CODEINE	PROGRESS LABS	LQ	5
PHINT-30	WESTERN RESEARCH LAB.	CA	4
PHINTB	WESTERN RESEARCH LAB.	TB	4
PI-HS	PI-LON LABS	CA	4
PIRIN-PLUS	SCRIP INC.	TB	3
PLACIOYS	VARIOUS	CA	4
PLEGINE	AYERST LABORATORIES	TB	3
PLEXONAL	SANDOZ PHARM	TB	3
PMP EXCEPTORANT	AMERICAN INDUSTRIES	SY	5
PMZ EXCEPTORANT WITH CODEINE PHOSPHATE	OXFORD PHARM	SY	5
POLY-CODILENE	HANCE BROS & WHITE	LQ	5
POLY-HISTINE	BOCK PHARMACAL CO.	LQ	5
PONDIMIN	ROBINS A H CO INC.	TB	4
PRE-SATE	WARNER-CHILCOTT LABS.	XT	3
PRE-SED	VARIOUS	TB	3

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
QUAQUEL P.G.	RUGBY LABORATORIES	LQ	5
QUIBAR	VARIOUS	TB	3
QUIBAR	VARIOUS	EL	3
QUIBAR	VARIOUS	CA	3
QUIESS	O'NEAL JONES FELDMAN	TB	3
QUIL CAPS	ECONO RX INC	CA	3

R

R.A.F.	FORT DAVID LABS	CA	3
RALBRATE	JONES AND VAUGHAN	SY	4
RATIONALE COUGH SYRUP FORTE	FORT DAVID LABS	SY	3
RECTULES	FELLOWS MED MFG CO	SU	4
REDUCTO IMPROVED	ARCUM PHARM CORP	TB	3
RELATIN	STANDARD DRUG PROD	TB	3
RELIGESIC IMPROVED	SCOTT-ALISON PHARM	TB	3
RENIPHEN	WINSTON PHARMACEUTIC	TB	3
REPOSANS 10	WESLEY PHARMACAL CO	CA	4
REPOSE REVISED (VET)	DIAMOND LABS	LQ	3
REPRO COMPOUND 65	REID-PROVIDENT LABS	CA	4
RESTOPHEN	NOYES P J CO	TB	4
RETON (LAVENDER)	TRI-STATE PHARM	TB	3
REX-A-MIST EXPECTORANT	RUCKSTUHL COMPANY	LQ	5
REXAHISTINE DH	ECONO RX INC	EL	3
REXAHISTINE EXPECTORANT	ECONO RX INC	LQ	3
REXIPED-C EXPECTORANT	ECONO RX INC	LQ	3
REXIGEN	ION LABORATORIES	TB	3
REYMACOF-AC	REYMAN DRUG CO	SY	5
RICHISTINE DH	HALSEY DRUG COMPANY	EL	5
RICHISTINE EXPECTORANT	HALSEY DRUG COMPANY	LQ	5
RICOR	VARIOUS	TB	3
RICOR RED	BUNDY C M COMPANY	ET	3
RID-A-PAIN W CODEINE	PFEIFFER CO	TB	5
RO-CHLORZEPOXIDE	ROBINSON LABORATORY	CA	4
RO-DIET	ROBINSON LABORATORY	TB	4
RO-DIPHEN-ATRO	ROBINSON LABORATORY	TB	5
RO-TUSSIN SYRUP A.C.	ROGERS WHOLESALERS	SY	5
ROBAM	SIG INCORPORATED	TB	4
ROBAMATE	ROBINSON LABORATORY	TB	4
ROBICOFF A.C.	PACE PHARM	LQ	5
ROBITUSSIN A.C.	VARIOUS	LQ	5
ROBITUSSIN DAC	ROBINS A H CO INC	LQ	5
ROBSTAT 70	THOMAS PHARM	XT	3
ROFED-C EXPECTORANT	VARIOUS	LQ	5
ROHISTINE DH	THREE P PRODUCTS	EL	5
ROHISTINE EXPECTORANT	THREE P PRODUCTS	EL	5
ROLA-METHAZINE DECONGESTANT EXPT W COD	ROBINSON LABORATORY	SY	5
ROLA-METHAZINE W CODEINE	ROBINSON LABORATORY	LQ	5
ROLAHIST DA	ROBINSON LABORATORY	LQ	5
ROLAPHENT 15, 30	ROBINSON LABORATORY	CA	4
ROLATHIUMIDE	ROBINSON LABORATORY	TB	3
ROMAZINE EXPECTORANT W CODEINE	WESLEY PHARMACAL CO	LQ	5
ROMAZINE VC EXPECTORANT W CODEINE	WESLEY PHARMACAL CO	LQ	5
ROPLEDGE	ROBINSON LABORATORY	TB	3
ROPOXY	ROBINSON LABORATORY	CA	4
ROPOXY-COMPOUND-65	ROBINSON LABORATORY	CA	4
ROTANE DC EXPECTORANT	VARIOUS	LQ	5
ROTENSE	ROBINSON LABORATORY	TB	3
ROTUSSIN SYRUP A.C.	THREE P PRODUCTS	SY	5
RU-K-N	RUCKER PHARMACAL CO	LQ	3
RU-LOR-N	RUCKER PHARMACAL CO	TB	3
RU-TUSS	RUCKER PHARMACAL CO	LQ	3
RU-TUSS EXPECTORANT	RUCKER PHARMACAL CO	LQ	5
RUCK-SED	VARIOUS	TB	3
RUCK-SED ELIXIR	RUCKER PHARMACAL CO	EL	3
RYMA-C & CX	MALLINCKRODT	SY	5

PRODOLOR	AMFRE-GRANT INC	TB	3
PROGESIC COMPOUND-65	ULMER PHARMACAL CO	CA	4
PROGESIC-65	ULMER PHARMACAL CO	CA	4
PROMAGEN-G	GRAFTON PHARM	LQ	5
PROMATE	KAY PHARMACAL CO	TB	4
PROMATUSS	PARKDALE MEDICAL	LQ	5
PROMET	CENTURY PHARM INC	CA	4
PROMETH COMPOUND WITH CODEINE	MEDWICK LABS INC	SY	5
PROMETH EXPECTORANT W CODEINE	SCHEN HENRY INC	LQ	5
PROMETH VC W CODEINE	BARRE DRUG CO	LQ	5
PROMETHAPAR VC WITH CODEINE	PARMED PHARM	LQ	5
PROMETHAPAR WITH CODEINE	PARMED PHARM	LQ	5
PROMETHAZINE EXPECTORANT W CODEINE	VARIOUS	LQ	5
PROMETHAZINE VC EXPECTORANT W CODEINE	VARIOUS	LQ	5
PROMETHAZINE VC W CODEINE	VARIOUS	LQ	5
PROMEX EXPECTORANT W CODEINE	DRUG AIDS INC	SY	5

PROMEX VC EXPECTORANT W CODEINE	DRUG AIDS INC	LQ	5
PROMEX W CODEINE	LEMMON PHARMACAL CO	LQ	5
PROPANTHELINE BROMIDE W PB	TRACY PHARMACAL CO	TB	4
PROPHENAMINE EXPECTORANT WITH CODEINE	CARROLL CHEM CO	LQ	5
PROPOXYPHENE	VARIOUS	PW	4
PROPOXYPHENE	VARIOUS	CA	4
PROPOXYPHENE ACETAMINOPHEN COMP	RICHLYN LABORATORIES	CA	4
PROPOXYPHENE COMPOUND	VARIOUS	CA	4
PROPOXYPHENE COMPOUND 65	VARIOUS	CA	4
PROPOXYPHENE HCL COMPOUND-65	ATLAN PHARMACEUTICAL	CA	4
PROPOXYPHENE HCL W APAP 65/650	PUREPAC PHARM	TB	4
PROPOXYPHENE W ACETAMINOPHEN	VARIOUS	CA	4
PROPOXYPHENE W APAP	VARIOUS	CA	4
PROTENSION	BLAINE COMPANY	TB	3
PROTHAZINE W CODEINE	NORTH AMERICAN PHARM	LQ	5
PROTRAN	VARIOUS	TB	4
PROTUSS-CF	CALDWELL & BLOOR CO	SY	5
PROVAL NO 3	BEECHAM-MASSENGILL	CA	3
PROVON COMPOUND-65	GRAFTON PHARM	CA	4
PROXAGESIC	TUTAG PHARMACEUTICAL	CA	4

PRUNICODINE	ILLY ELI & CO	LQ	5
PSEUDO-MIST EXPECTORANT	THERA-MEDIC	LQ	3
PSEUDODINE C	BAY LABORATORIES INC	LQ	5
PSEUDOPHEDRINE HCL CODEINE PHOSPHATE	X-V PHARMACAL CO	XC	3
PSEUDOPHEN C	BAY LABORATORIES INC	LQ	5
PT-15	WESTERN RESEARCH LAB	CA	4
PT-30	WESTERN RESEARCH LAB	CA	4
PTY-30	WESTERN RESEARCH LAB	TB	4
PULSAPHEN	WESLEY PHARMACAL CO	TB	4
PURETANE EXPECTORANT DC	PUREPAC PHARM	LQ	5
PYRACOL	VITA-FORE PRODUCTS	SY	5
PYRADYL	FATON PHARM INC	LQ	5
PYRADINE COMPOUND	LEMMON PHARMACAL CO	TB	3
PYRIBETHAMINE EXPT W CODEINE	CBA-DEIGY CORP	LQ	5
PYRIBEX-CF	CALDWELL & BLOOR CO	LQ	5
PYRROKATE W CODEINE PHOSPHATE	UPJOHN CO	CA	3

Q

Q-SAM 400	QUALITY PHARMACAL	TB	4
Q-DC	QUALITY PHARMACAL	CA	3
Q-VON 65	QUALITY PHARMACAL	CA	4
QUABUTA	QUAKER CITY PHARM CO	CA	3
QUACHABEL	QUAKER CITY PHARM CO	TB	4
QUAHSTASIN	QUAKER CITY PHARM CO	CA	3
QUABAR	QUAKER CITY PHARM CO	CA	4
QUAN-B YELLOW	MALLARD INC	XT	3
QUASIN	QUAKER CITY PHARM CO	CA	3
QUASIN JR	QUAKER CITY PHARM CO	TB	3
QUAZINE	QUAKER CITY PHARM CO	TB	3

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
S			
S T FORTE	SCOT-TUSSIN PHARM	SY	3
S & P PLUS (ORANGE)	LEMMON PHARMACAL CO	TB	3
S & P AND B	MODERN DRUG CO	TB	4
SADAC CAPS	MEDICAL SPECIALTIES	CA	3
SALATH WITH CODEINE	FERNDAL LABS	TB	3
SALDOV	TRUXTON C O INC	TB	3
SALIBARB	WALES CHEMICAL CO	EL	3
SALIPAL	KENTON DRUG CO	TB	3
SALOL AND BISMUTH COMP	VALE CHEMICAL CO	TB	3
SANOREX	SANDOZ PHARM	TB	3
SARISOL	HALSEY DRUG COMPANY	EL	3
SARISOL	HALSEY DRUG COMPANY	TB	3
SARONIL	SARON PHARMACAL CORP	TB	4
SECOBARBITAL	VARIOUS	SU	3
SECONAL SODIUM	LILLY ELI & CO	LQ	4
SED-A-PED	MISSOURI PHARM	CA	3
SEDA-8	BOODY W E AND CO	TB	4
SEDABAMATE	MALLARD INC	TB	4
SEDABARS	ROERCKE AND TAFEL	TB	4
SEDADROPS REFORMULATED	MERRELL-NATIONAL LAB	DP	4
SEDAQESIC	VARIOUS	TB	3
SEDAJEN	VARIOUS	TB	4
SEDAMEL	LORNEL COMPANY	TB	4
SEDATIVE # 85-A M	STANDARD PHARMACAL	TB	4
SEDATIVE COMBINATION # 10-B, 13 & 20	STANDARD PHARMACAL	TB	4
SEDATIVE W LIVER	STANDARD PHARMACAL	TB	4
SEDITAL	VARIOUS	TB	4
SEDIEMAS	TRUXTON C O INC	TB	4
SEDORAL	MALLARD INC	SY	5
SEDPAINE	FREEMONT DRUG CO	TB	3
SERAX	WYETH LABORATORIES	TB	4
SERAX	WYETH LABORATORIES	CA	4
SEREN	FOY LABS INC	CA	4
SERITAL	SCHUEMANN JONES	TB	3
SHERAFED-C	SHERATON LABS INC	LQ	5
SHERFAC-C EXPECTORANT	SHERBY PHARM CO	LQ	5
SHERHISTINE D H ELIXIR	SHERBY PHARM CO	LQ	5
SHERHISTINE EXPECTORANT	SHERBY PHARM CO	LQ	5
SHERITAL	MEDICAL SPECIALTIES	EL	4
SHERRYBARB ELIXIR	SHERBY PHARM CO	EL	3
SHERRYCOFF	SHERBY PHARM CO	LQ	5
SHERRYTUSSIN A C	SHERBY PHARM CO	LQ	5
SIA RECTAL SUPPOSITORIES	SPENCER-MEAD INC	SU	3
SINUTAB WITH CODEINE	WARNER-CHILCOTT LABS	TB	3
SK-APAP W CODEINE	SMITH KLINE FRENCH	TB	3
SK-BAMATE	SMITH KLINE FRENCH	TB	4
SK-CHORAL HYDRATE	SMITH KLINE FRENCH	CA	4
SK-LYGEN	SMITH KLINE FRENCH	CA	4
SK-PHENOBARBITAL	SMITH KLINE FRENCH	CA	4
SK-65	SMITH KLINE FRENCH	CA	4
SK-65 COMPOUND	SMITH KLINE FRENCH	CA	4
SK-65 W APAP	SMITH KLINE FRENCH	TB	4
SLIM-HAL	HALSOM DRUG COMPANY	TB	3
SLIMZEM	ZEMMER CO INC	TB	3
SODIUM N-AMYLETHYL BARBITURATE	ARCUM'S CHEMICAL WES	BL	3
SODUBEN	ARCUM PHARM CORP	TB	3
SODUBEN	POYTHRESS & CO INC	TB	4
SOLFOTON	POYTHRESS & CO INC	CA	4
SOLFOTON	POYTHRESS & CO INC	TB	4
SOLUBARB	FELLOWS MED MFG CO	TB	4
SOM-A-BARB	CHANDLER PHARMACAL	TB	4
SOMA COMPOUND WITH CODEINE	WALLACE LABORATORIES	TB	3
SOMBULER	RIKER LABS INC	TB	3
SOMNOS	MERCK & CO INC	EL	4
SOMNYL	FLAR MEDICINE CO	LQ	4
SORBASE 2	FORT DAVID LABS	SY	3
SPABLIN NO.2	ARCUM PHARM CORP	TB	4
SPAM-RD TABS	METRO MED INC	TB	3
SPANTAN	PALMEDICO INC	TB	4
SPC COMPOUND WITH CODEINE PHOSPHATE	JINDEN LABORATORIES	TB	3
SPC WITH CODEINE	BARRE DRUG CO	TB	3
SPEN-HISTINE DH	SPENCER-MEAD INC	EL	5
SPEN-HISTINE EXPECTORANT	SPENCER-MEAD INC	LQ	5
SPENTANE DC EXPECTORANT	SPENCER-MEAD INC	LQ	5

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
STATOBEX	LEMMON PHARMACAL CO	TB	3
STATOBEX	LEMMON PHARMACAL CO	CA	3
STERAPHEN W CODEINE	STERI-MED INC	TB	3
STERIFED C EXPECTORANT	STERI-MED INC	LQ	5
STERO-DARVON W ASA	LILLY ELI & CO	TB	4
STIM-100	SCRIP INC	CA	3
STIM-35	SCRIP INC	TB	3
STODER	JALCO PHARM INC	TB	3
STOGESIC-65	JALCO PHARM INC	CA	4
STOPT-SYRUP	SCRIP INC	LQ	3
STOPT-23	SCRIP INC	TB	3
SU-TUSS	MOFFET INC	LQ	5
SURITAL	PARKE-DAVIS & CO	LI	3
SYNALGOS-DC	IVES LABS INC	CA	3
SYNATUSS-TWO	FREEMONT DRUG CO	SY	5
SYNPHIBICOL	WINTHROP LABS	SY	5
SYRCODATE	BLUE LINE CHEM CO	SY	5
SYRCHIST	VARIOUS	LQ	5
SYRDIOL A-F COMPOUND	VARIOUS	LQ	5
SYROLATE WITH CODEINE	BRITANT PHARM	LQ	5
SYRUP MONATUSS	ECHO RX INC	SY	5
SYRUP OF THENYLATE	HALSEY DRUG COMPANY	SY	5
T			
T.C.S	VARIOUS	LQ	5
T.I.D. TABLETS	LEN-TAG COMPANY	TB	4
TABLETS FENOBARBITAL	SEHN-MENDEZ LABS	TB	4
TAFFO-PHEN LAYTABS	TRUXTON C O INC	TB	3
TAKOLIN WITH PAREGORIC	DETROIT FIRST AID CO	LQ	5
TAMINE EXPT DC	GENEVA GENERICS	LQ	5
TANGENE	TRACY PHARMACAL CO	SY	5
TANOREX	LASER INC	TB	3
TEOFERN	FERNDAL LABS	TB	3
TEGA-CODE	VARIOUS	TB	3
TEGA-NIL	ORTEGA PHARM CO	TB	3
TEGA-TUSSIN	VARIOUS	SY	3
TEGA-TUSSIN	ORTEGA PHARM CO	TB	3
TEN-SHUN	HABERLE DRUG COMPANY	TB	3
TEN-U-MAST	MAST M M COMPANY	TB	4
TENABARB	QUEEN CITY PHARMACAL	TB	3
TENAX	REID-PROVIDENT LABS	CA	4
TENREX	BUCKSTUHL COMPANY	XT	4
TENSACRAFT	KRAFT PHARMACEUTICAL	TB	3
TENSENAL	FOY LABS INC	TB	3
TENSORARB	VARIOUS	CA	3
TENSORARB	PHARMECON INC	TB	3
TENSTAN	STANDEX LABORATORIES	TB	3
TENUATE	MERRELL-NATIONAL LAB	TB	4
TENUATE DOSPAN	MERRELL-NATIONAL LAB	XT	4
TEPANIL	RIKER LABS INC	TB	4
TEPANIL TEN-TABS	RIKER LABS INC	TB	4
TERAMINE	RUSBY LABORATORIES	TB	3
TERMINE	TRACY PHARMACAL CO	TB	3
TERPIN HYDRATE & CODEINE	VARIOUS	EL	5
THEDA LO	THEDA CORPORATION	TB	5
THEDA LO	THEDA CORPORATION	LQ	5
THEDA MEP	THEDA CORPORATION	TB	4
THEDA P C 65	THEDA CORPORATION	CA	4
THEDA PH	THEDA CORPORATION	CA	4
THEDA PH 65/APAP	THEDA CORPORATION	TB	4
THEDA-BROM DC EXPECTORANT	THEDA CORPORATION	LQ	5
THEDA-HIST DH	THEDA CORPORATION	LQ	5
THEDA-HIST EXPECTORANT	THEDA CORPORATION	LQ	5
THEDA-METH EXPECTORANT W CODEINE	THEDA CORPORATION	LQ	5
THEDA-METH VC W CODEINE	THEDA CORPORATION	LQ	5
THEDA-PHED C EXPECTORANT	THEDA CORPORATION	LQ	5
THEDA-PHEN	THEDA CORPORATION	LQ	5
THEDA-TUSS A.C.	THEDA CORPORATION	LQ	5
THERA-MG	THERA PHARM CO INC	TB	3
THIABITAL	RHODE J G INC	EL	4
THIABITAL	RHODE J G INC	TB	4

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
THIAMYL SODIUM W 5% SODIUM CARBONATE	BAKER W F DRUG CO	BL	3
THOREX	THOMPSON LABS	CA	3
TL-BAMATE	THOMPSON LABS	CA	4
TL-CHLORAL	THOMPSON LABS	CA	4
TL-PHENO	THOMPSON LABS	CA	4
TOLU SED	FIRST TEXAS PHARM	SY	3
TOLUMINT-C	NOYES P J CO	LQ	3
TOLUMINT-DHC	NOYES P J CO	LQ	3
TORA	TUTAG PHARMACEUTICAL	TR	4
TRANCOY	TRUSTON C O INC	TR	4
TRANMP	RED-PROVIDENT LABS	TR	4
TRANQUI-TABS	GENERAL PHARM INC	TR	4
TRANQUILANS	NOYES P J CO	TR	4
TRANXENE	VARIOUS	TR	4
TRANXENE	VARIOUS	CA	4
TRANXENE 30	ABBOTT	TR	4
TRI-BAR	VARIOUS	TR	4
TRI-PHEN DC	BAY LABORATORIES INC	LQ	3
TRI-VON COMP. 65	TRI COUNTY PHARMACAL	CA	4
TRIACIN C EXPECTORANT	VARIOUS	LQ	3
TRIADINE-C	BOCK PHARMACAL CO	SY	3
TRIATED C SYRUP	WOLINS PHARM CORP	SY	3
TRIAMINIC EXPECTORANT DH	DORSEY LABORATORIES	LQ	3
TRIAMINIC EXPECTORANT WITH CODEINE	DORSEY LABORATORIES	SY	3
TRIAPHED-C	VERATEX CORPORATION	LQ	3
TRIAPHEN DC	DUNHALL PHARM INC	CA	3
TRICODENE	PFIZER CO	LQ	3
TRIFED-C EXPECTORANT	GENEVA GENEXICS	SY	3
TRIHSTA-COD	RECSEI LABS	LQ	3
TRIM TABS	VARIOUS	TR	3
TRIPHEN	ROHDEZ LABORATORIES	TR	3
TRIOBIT-C EXPECTORANT	ORBIT PHARMACEUTICAL	LQ	3
TRIPLE SEDATIVE WITH HMB	DRUMMER LABS	TR	3
TRIPROFED-C EXPECTORANT	MALSEY DRUG COMPANY	SY	3
TRIPROFED W CODEINE	ROBINSON LABORATORY	LQ	3
TRIPRODINE W CODEINE	KAISER FOUND. HOSP.	LQ	3
TRITANE DC EXPECTORANT	ECONO RX INC	LQ	3
TRITUSSIN	TOWNE PAULSEN & CO	SY	3
TSG CROUP LIQUID	ELDER P & COMPANY	LQ	3
TUSS-A-C	ARCUM PHARM CORP	SY	3
TUSSAFIN EXPECTORANT	RUGBY LABORATORIES	LQ	3
TUSSANIL	MISEMER PHARM INC	LQ	3
TUSSANIL DH	MISEMER PHARM INC	TR	3
TUSSAR	ARMOUR PHARM	LQ	3
TUSSCODENE-AC	PROGRESS LABS	SY	3
TUSSEND	DOW CHEMICAL CO	TR	3
TUSSEND EXPECTORANT	DOW CHEMICAL CO	EL	3
TUSSGEN MODIFIED	GENEXIC DRUG CORP	LQ	3
TUSSI-ORGANIDIN	WALLACE LABORATORIES	EL	3
TUSSIONEX	PENNWALT PRODUCTS	SS	3
TUSSIONEX CAPSULES	PENNWALT PRODUCTS	XC	3
TUSSIONEX TABLETS	PENNWALT PRODUCTS	XT	3
TUSSIREX	SCOT-TUSSIN PHARM	SY	3
TUSSTROL	RED-PROVIDENT LABS	LQ	3
TYLENOL W CODEINE	VARIOUS	LQ	3
TYLENOL W CODEINE	VARIOUS	TR	3

U

UCAN 30	BO-MISE COMPANY	CA	4
UGA-NO 3	ECONO RX INC	TR	3
UNIOESIC-A	UPJOHN CO	TR	4
UNITRIM	UNITED RESEARCH LABS	TR	3
UPLIGE	BO-MISE COMPANY	TR	3

PRODUCT NAME	LABELER	DOSAGE FORM	SCHEDULE
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V

V-CHLOR	VANGARD LABS	LQ	4
V-CLOR	VANGARD LABS	CA	4
VALDEINE	VALE CHEMICAL CO	TR	3
VALIUM	ROCHE LABS	TR	4
VALIUM	VARIOUS	U	4
VALIUM	IOWA UNIVERSITY	TR	4

VALIUM	DISTA PRODUCTS CO	CA	4
VERSTRAN	WARNER-CHILCOTT LABS	TR	4
VICOPIN	KNOLL PHARMACEUTICAL	TR	3
VINBARBITAL	GANE'S CHEMICAL WKS	BL	3
VISTABAMATE	VISTA LABS	TR	4
VITRAZINE	VITARINE CO INC	TR	3
VITRAZINE-TR (RED & YELLOW)	VITARINE CO INC	XC	3
VORAPNE	USV PHARM CORP	TR	3

W

WANS	WEBCON PHARM	SU	3
WEHLESS TIMECELLES	HAUCK W E INC	XC	4
WEIGHTROL	NORTH AMERICAN PHARM	CA	3
WEIGHTROL	NORTH AMERICAN PHARM	TR	3
WESCOD	WESLEY PHARMACAL CO	TR	3
WESCOPHEN-S	WESLEY PHARMACAL CO	TR	4
WESDEX	WESLEY PHARMACAL CO	XC	3
WESTROL	WESLEY PHARMACAL CO	TR	4
WHITE-BAR ONE & TWO	FREEPORT DRUG CO	TR	4
WILPOWE	FOY LABS INC	CA	4
WINDOLOE	WINSTON PHARMACAL	TR	3
WINSTAMINE T WITH CODEINE	WINSTON PHARMACEUTIC	LQ	3

WINSTAMINE-MW	WINSTON PHARMACEUTIC	LQ	3
WOLGRAINE	WOLINS PHARM CORP	CA	3
WOLGRAINE	WOLINS PHARM CORP	TR	3
WOLPECTIN-PG	WOLINS PHARM CORP	SS	3
WOLUSTIN AC	WOLINS PHARM CORP	SY	3
WP PHENDOREX	WESTERN RESEARCH LAB	TR	3
WPS BLUE	LINDEN LABORATORIES	TR	4
WPHING	WESTERN RESEARCH LAB	TR	4
WYGESIC	WYETH LABORATORIES	TR	4

X

X-TRO	XTTRUM LABS	CA	4
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Y

YERBA-CREO-IPACAC WITH CODEINE	BOERICKE AND TAFEI	SY	3
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Z

ZO-TUSSIS	HALSOM DRUG COMPANY	SY	3
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3

3-P BAKATE	PARK PLAZA PHARMACEU	TR	4
3-P DY-ETT	PARK PLAZA PHARMACEU	CA	4
3-P EXPECTORANT WITH CODEINE	PARK PLAZA PHARMACEU	LQ	3
3-P FAME WITH CODEINE	PARK PLAZA PHARMACEU	TR	3
3-P BONCAP	PARK PLAZA PHARMACEU	CA	4

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 656

Mackerel Fishery of the Northwest Atlantic, Allocation of Atlantic Mackerel From Reserve

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/Commerce.

ACTION: Notice of proposed Atlantic Mackerel allocation.

SUMMARY: Under the authority delegated by the Assistant Administrator for Fisheries, NOAA, the Regional Director, Northeast Region, National Marine Fisheries Service (NMFS), is proposing the allocate the entire reserve of Atlantic mackerel (*Scomber scombrus*) to foreign nations. The Atlantic mackerel reserve of 6,000 metric tons (mt) would be transferred to the total allowable level of foreign fishing (TALFF), increasing it from 4,000 mt to 10,000 mt.

DATE: Comments on this proposed 6,000 mt allocation of mackerel from reserve to TALFF are invited for a 15-day period. Comments must be submitted in writing on or before December 10, 1980.

ADDRESS: All comments should be sent to: National Marine Fisheries Service, Northeast Region, State Fish Pier, Gloucester, Massachusetts 09130. Mark: "Comments on Proposed Mackerel Allocation" on the outside of the envelope.

FOR FURTHER INFORMATION CONTACT: Allen E. Peterson, Jr., Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930; or Frank Grice, Chief, Fisheries Management Division, Northeast Region, National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts 01930. Telephone number for both individuals is (617) 281-3600.

SUPPLEMENTARY INFORMATION: Regulations to implement the management measures of the Fishery Management Plan for Atlantic Mackerel, as amended, were published in the *Federal Register* at 45 FR 45291 and 45 FR 60457. These regulations establish a reserve for Atlantic mackerel and provisions to allocate all or part of the reserve to TALFF. The regulations

§ 611.20 [Appendix I] [Revised]

authorize the Regional Director to review during October of each year the U.S. mackerel harvest and the ability and intent of the domestic industry to harvest and process this species during the remainder of the fishing year. The Regional Director then projects the total amount of mackerel which will be harvested by domestic fishermen through March 31, 1981. If the projection shows that the estimate of domestic annual harvest (DAH) of 20,000 mt is adequate for the domestic industry during this fishing year, then the entire reserve of 6,000 mt is allocated to foreign fishermen.

The total mackerel catch for this fishing year was derived by examining the present reported landings from April through September, and projecting commercial and recreational landings for the remainder of the fishing year. Also, the ability and intent of domestic harvesters and processors to harvest and process mackerel during this period was considered.

The Mid-Atlantic and New England Fishery Management Councils and the National Marine Fisheries Service have inquired to determine the intent and the ability of harvesters and processors to handle mackerel landings from April through September, 1980, were 1,449 mt. This represents a five percent increase over the 1,378 mt landed in the same period of the previous fishing year. Additionally, the current 1980 assessment of the mackerel spawning stock reveals a 20 percent increase over the 1979 spawning stock size. Therefore, taking this 20 percent increase in stock size and other relevant data into consideration the Regional Director projects that the total mackerel landings by U.S. fishermen for the 1980-81 fishing year will be 5,332 mt. It has been determined that the remainder of the DAH is adequate for their needs. Therefore, the entire 6,000 mt of the reserve is proposed to be allocated to TALFF.

(16 U.S.C. 1801 *et seq.*)

Signed at Washington, D.C., this 19th day of November 1980.

Robert K. Cromwell,
Deputy Executive Director, National Marine Fisheries Service.

It is proposed to revise 50 CFR 611.20 Appendix 1 to read as follows:

PART 611—FOREIGN FISHING

Species	Species code	Areas	OY	DAH	JVP	Reserve	TALFF
1. Northwest Atlantic Ocean fisheries:							
B. Mackerel fishery, mackerel, Atlantic.....	204		30,000	20,000	0	0	10,000

Notices

Federal Register

Vol. 45, No. 228

Monday, November 24, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Bylaws of Corporation

The bylaws of the Commodity Credit Corporation, amended September 19, 1980, are as follows:

Offices

1. The principal office of the Corporation shall be in the City of Washington, District of Columbia, and the Corporation shall also have offices at such other places as it may deem necessary or desirable in the conduct of its business.

Seal

2. There is impressed below the official seal which is hereby adopted for the Corporation. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced.



Meetings of the Board

3. Regular meetings of the Board shall be held, whenever necessary, on Wednesdays at 9:30 a.m. in the Board meeting room in the U.S. Department of Agriculture in the City of Washington, D.C. Notice of such meetings shall be

provided in the same manner as is specified for special meetings in Paragraph 4. No regular meetings of the Board shall be held except in accordance with provisions of the Government in the Sunshine Act (5 U.S.C. 552b).

4. Special meetings of the Board may be called at any time by the Chairman, the Vice Chairman, or by the President, or the Executive Vice President and shall be called by the Chairman, the Vice Chairman, the President, or the Executive Vice President at the written request of any five Directors. Notice of special meetings shall be given either personally or by mail (including intradepartmental mail channels of the Department of Agriculture or interdepartmental mail channels of the Federal Government) or by mailgram, and notice by telephone shall be personal notice. Any Director may waive in writing such notice as to himself, whether before or after the time of the meeting, and the presence of a Director at any meeting shall constitute a waiver of notice of such meeting. No notice of an adjourned meeting need be given. Any and all business may be transacted at any special meeting unless otherwise indicated in the notice thereof. No special meetings of the Board shall be held except in accordance with provisions of the Government in the Sunshine Act (5 U.S.C. 552b).

5. The Secretary of Agriculture shall serve as Chairman of the Board. The Deputy Secretary of Agriculture shall serve as Vice Chairman of the Board and, in the absence or unavailability of the Chairman, shall preside at meetings of the Board. In the absence or unavailability of the Chairman and the Vice Chairman, the President of the Corporation shall preside at meetings of the Board. In the absence or unavailability of the Chairman, the Vice Chairman, and the President, the Directors present at the meeting shall designate a Presiding Officer.

6. At any meeting of the Board a quorum shall consist of five Directors. The act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board.

7. The General Council of the Department of Agriculture, whose office

shall perform all legal work of the Corporation, and the Associate General Counsel in the Office of the General Counsel who is in immediate charge of legal work for the Corporation shall, as General Counsel and Associate General Counsel of the Corporation, respectively, attend meetings of the Board.

8. The Executive Vice President, the Vice President who is the Associate Administrator of the Agricultural Stabilization and Conservation Service, and the Secretary shall attend meetings of the Board. Each of the other Vice Presidents and Deputy Vice Presidents, and the Controller shall attend meetings of the Board during such times as the meetings are devoted to consideration of matters as to which they have responsibility.

9. Other persons may attend meetings of the Board upon specific authorization by the Chairman, Vice Chairman, or President.

Compensation of Board Directors

10. The Compensation of each Director shall be prescribed by the Secretary of Agriculture. Any Director who holds another office or position under the Federal Government, the compensation for which exceeds that prescribed by the Secretary of Agriculture for such Director, may elect to receive compensation at the rate provided for such other office or position in lieu compensation as a Director.

Officers

11. The officers of the Corporation shall be a President, Vice Presidents, and Deputy Vice Presidents as hereinafter provided for, a Secretary, a Controller, a Treasurer, a Chief Accountant, and such additional officers as the Secretary of Agriculture may appoint.

12. The Under Secretary of Agriculture for International Affairs and Commodity Programs shall be ex officio President of the Corporation.

13. The following officials of the Agricultural Stabilization and Conservation Service (referred to as ASCS), Foreign Agricultural Service (referred to as FAS), Food and Nutrition Service (referred to as FNS), Food

Safety and Quality Service (referred to as FSQS), and the Agricultural Marketing Service (referred to as AMS) shall be ex officio officers of the Corporation:

Administrator, ASCS; Executive Vice President.
 Administrator, FAS; Vice President.
 Administrator, AMS; Vice President.
 Administrator, FNS; Vice President.
 Administrator, FSQS; Vice President.
 General Sales Manager and Associate Administrator, FAS; Vice President.
 Associate Administrator, ASCS; Vice President.
 Deputy Administrator, State and County Operations, ASCS; Deputy Vice President.
 Deputy Administrator, Commodity Operations, ASCS; Deputy Vice President.
 Deputy Administrator, Management, ASCS; Deputy Vice President.
 Executive Assistant to the Administrator, ASCS; Secretary.
 Director, Financial Management Division, ASCS; Controller.
 Deputy Director-Fiscal, Financial Management Division, ASCS; Treasurer.
 Chief, Financial Systems and Procedures Branch, Financial Management Division, ASCS; Chief Accountant.

The person occupying, in an acting capacity, the office of any person designated ex officio by this paragraph 13 as an officer of the Corporation shall, during his occupancy of such office, act as such officer.

14. Officers who do not hold office ex officio shall be appointed by the Secretary of Agriculture and shall hold office until their respective appointments shall have been terminated.

The President

15. (a) The President shall have general supervision and direction of the Corporation, its officers and employees.

(b) The President shall establish and direct an Office of the Secretariat. Such office shall be responsible for obtaining or developing, as the President determines, information on major program or policy proposals submitted to the Board.

The Vice Presidents

16. (a) The Executive Vice President shall be the chief executive officer of the Corporation and shall be responsible for submission of all Corporation policies and programs to the Board. Except as provided in paragraphs (b), (c), (d), (e), and (f) below, the Executive Vice President shall have general supervision and direction of the preparation of policies and programs for submission to the Board, of the administration of the policies and programs approved by the Board, and of the day-to-day conduct of the business of the Corporation and of its officers and employees.

(b) The Vice President who is the Administrator, Foreign Agricultural Service, shall be responsible for preparation for submission by the Executive Vice President to the Board of those policies and programs of the Corporation which are for performance through the facilities and personnel of the Foreign Agricultural Service. He shall also have responsibility for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of the foreign Agricultural Service. He shall also perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(c) The Vice President who is Administrator, Agricultural Marketing Service, shall be responsible for the administration of those operations of the Corporation, under policies and programs approved by the board, which are carried out through facilities and personnel of the Agricultural Marketing Service. He shall also perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(d) The Vice President who is the General Sales Manager and Associate Administrator, Foreign Agricultural Service, shall be responsible for preparation for submission by the Executive Vice President to the Board of policies and programs of the Corporation which are for performance through the facilities and personnel of the Foreign Agricultural Service. He shall also have responsibility for the administration of those operations of the Corporation, under the policies and programs approved by the Board, which are carried out through facilities and personnel of the Foreign Agricultural Service. He shall also perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(e) The Vice President who is the Administrator, Food and Nutrition Service, shall be responsible for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of the Food and Nutrition Service. He shall also perform such special duties and exercise such powers as may be prescribed, from time to time,

by the Secretary of Agriculture, the Board, or the President of the Corporation.

(f) The Vice President who is the Administrator, Food Safety and Quality Service, shall be responsible for the Administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of the Food Safety and Quality Service. He shall also perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

17. The Vice President who is the Associate Administrator, Agricultural Stabilization and Conservation Service, and the Deputy Vice Presidents shall assist the Executive Vice President in the performance of his duties and the exercise of his powers to such extent as the President or the Executive Vice President shall prescribe, and shall perform such special duties and exercise such powers as may be prescribed from time to time by the Secretary of Agriculture, the Board, the President of the Corporation, or the Executive Vice President of the Corporation.

The Secretary

18. The Secretary shall attend and keep the minutes of all meetings of the Board; shall attend to the giving and serving of all required notices of meetings of the Board; shall sign all papers and instruments to which his signature shall be necessary or appropriate; shall attest the authenticity of and affix the seal of the Corporation upon any instrument requiring such action and shall perform such other duties and exercise such other powers as are commonly incidental to the Office of Secretary as well as such other duties as may be prescribed from time to time by the President or the Executive Vice President.

The Controller

19. The Controller shall have charge of all fiscal and accounting affairs of the Corporation, including all borrowings and related financial arrangements, claims activities, and formulation of prices in accordance with established policies; and shall perform such other duties as may be prescribed from time to time by the President or the Executive Vice President.

The Treasurer

20. The Treasurer, under the general supervision and direction of the Controller, shall have charge of the custody, safekeeping and disbursement

of all funds of the Corporation; shall designate qualified persons to authorize disbursement of corporate funds; shall direct the disbursement of funds by disbursing officers of the Corporation or by the Treasurer of the United States, Federal Reserve Banks and other fiscal agents of the Corporation; and shall issue instructions incidental thereto; shall be responsible for documents relating to the general financing operations of the Corporation, including borrowings from the United States Treasury, commercial banks and others; shall arrange for the payment of interest on and the repayment of such borrowings; shall arrange for the payment of interest on the capital stock of the Corporation; shall coordinate and give general supervision to the claims activities of the Corporation and shall have authority to collect all monies due the Corporation, to receipt therefor and to deposit same for the account of the Corporation; and shall perform such other duties relating to the fiscal and accounting affairs of the Corporation as may be prescribed from time to time by the controller.

The Chief Accountant

21. The Chief Accountant, under the general supervision and direction of the Controller, shall have charge of the general books and accounts of the Corporation and the preparation of financial statements and reports. He shall be responsible for the initiation, preparation and issuance of policies and practices related to accounting matters and procedures, including official inventories, records, accounting and related office procedures where standardized, and adequate subsidiary records of revenues, expenses, assets and liabilities; and shall perform such other duties relating to the fiscal and accounting affairs of the Corporation as may be prescribed from time to time by the Controller.

Other Officials

22. Except as otherwise authorized by the Secretary of Agriculture or the Board, the operations of the Corporation shall be carried out through the facilities and personnel of the Agricultural Stabilization and Conservation Service, the Office of the General Sales Manager, the Foreign Agricultural Service, the Food and Nutrition Service, the Food Safety and Quality Service, and the Agricultural Marketing Service in accordance with any assignment of functions and responsibilities made by the Secretary of Agriculture and, within his respective agency or office, by the Administrators of the Agricultural Stabilization and Conservation Service,

Foreign Agricultural Service, Food and Nutrition Service, Food Safety and Quality Service, Agricultural Marketing Service, or the General Sales Manager of the Office of the General Sales Manager.

23. The Directors of the divisions and commodity offices of the Agricultural Stabilization and Conservation Service shall be contracting officers and executives of the Corporation in general charge of the activities of the Corporation carried out through their respective divisions or offices. The responsibilities of such Directors in carrying out activities of the Corporation, which shall include the authority to settle and adjust claims by and against the Corporation arising out of activities under their jurisdiction, shall be discharged in conformity with these bylaws and applicable programs, policies, and procedures.

Contracts of the Corporation

24. Contracts of the Corporation relating to any of its activities may be executed in its name by the Secretary of Agriculture or the President. The Vice Presidents, the Deputy Vice Presidents, the Controller, the Treasurer, and the Directors of the divisions and commodity offices of the Agricultural Stabilization and Conservation Service may execute contracts relating to the activities of the Corporation for which they are respectively responsible.

25. The Executive Vice President who is the Administrator of ASCS and, subject to the written approval by such Executive Vice President of each appointment, the Vice Presidents, the Deputy Vice Presidents, the Controller, and the Directors of the divisions and commodity offices of the Agricultural Stabilization and Conservation Service may appoint, by written instrument or instruments, such Contracting Officers as they deem necessary, who may, to the extent authorized by such instrument or instruments, execute contracts in the name of the Corporation. A copy of each such instrument shall be filed with the Secretary.

26. Appointments of Contracting Officers may be revoked by written instrument or instruments by the Executive Vice President or by the official who made the appointment. A copy of each such instrument shall be filed with the Secretary.

27. In executing a contract in the name of the Corporation, an official shall indicate his title.

Annual Report

28. The Executive Vice President shall be responsible for the preparation of an

annual report of the activities of the Corporation, which shall be filed with the Secretary of Agriculture and with the Board.

Amendments

29. These bylaws may be altered or amended or repealed by the Secretary of Agriculture, or subject to his approval by action of the Board at any regular meeting of the Board or at any special meeting of the Board, if notice of the proposed alteration, amendment, or repeal be contained in the notice of such special meeting.

Approval of Board Action

30. The actions of the Board shall be subject to the approval of the Secretary of Agriculture.

I, Bill Cherry, Secretary, Commodity Credit Corporation, do hereby certify that the above is a full, true, and correct copy of the bylaws of Commodity Credit Corporation, as amended September 19, 1980.

In witness whereof I have officially subscribed my name and have caused the corporate seal of the said Corporation to be affixed this twenty-fifth day of September 1980.

Bill Cherry,

Secretary, Commodity Credit Corporation.

[FR Doc. 80-36539 Filed 11-21-80; 8:45 am]

BILLING CODE 3410-05-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations

Notice is hereby given that, during the week ended November 14, 1980 CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR Part 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the

original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases, the Board may issue a final order without further proceedings.

Subpart Q Applications

Date filed	Docket No.	Description
Nov. 10, 1980.....	38942	Piedmont Aviation, Inc., P.O. Box 2720, Winston-Salem, North Carolina 27102. Application of Piedmont Aviation, Inc., pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests a Certificate of Public Convenience and Necessity to engage in scheduled air transportation of persons, property and mail between the terminal point Pittsburgh, Pa., and the terminal point Syracuse, N.Y. Conforming Applications and Answers may be filed by December 8, 1980.
Nov. 10, 1980.....	38943	Texas International Airlines, Inc., P.O. Box 12788, Houston, Texas 77017. Application of Texas International Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests the Board to amend its Certificate of Public Convenience and necessity for Routes 82 by the addition of new nonstop authority between the terminal point Dallas/Ft. Worth, Texas and the alternate terminal points: Akron/Canton, Ohio Albany, Georgia Albany, New York Allentown/Bethlehem/Easton, PA Asheville, N. Carolina Ashland, KY/Huntington, W. Virginia Aspen, Colorado Augusta, Georgia Bakersfield, California Bangor, Maine Billings, Montana Binghamton/Endcvt/Johnson City, New York Bismarck/Mandan, North Dakota Bozeman, Montana Bristol/Kingsport/Johnson City, Tennessee Buffalo/Niagara Falls, New York Burlington, Vermont Casper, Wyoming Cedar Rapids/Iowa City, Iowa Champaign/Urbana, Illinois Charleston, South Carolina Charleston/Dunbar, W. Virginia Charlotte, North Carolina Charlottesville, Virginia Chattanooga, Tennessee Columbia, South Carolina Columbus, Georgia Columbus, Ohio Dayton, Ohio Dothan, Alabama Duluth, Minn./Superior, Wis Eglin Air Force Base, Florida Elmira/Corning, New York Erie, Pennsylvania Eugene, Oregon Eureka/Arcata, California Evansville, Indiana Fairbanks, Alaska Fargo, N.D./Moorhead, Minnesota Fayetteville, Arkansas Fayetteville, North Carolina Flint, Michigan Fort Wayne, Indiana Fresno, California Grand Forks, N. Dakota Grand Junction, Colorado Grand Rapids, Michigan Great Falls, Montana Green Bay/Clintonville, Wis Greensboro/High Point, North Carolina Greenville/Spartanburg, South Carolina Gulfport/Biloxi, Mississippi Harrisburg/York, Pennsylvania Hilo, Hawaii, Hawaii Honolulu, Oahu, Hawaii Huntsville/Decatur, Alabama Idaho Falls, Idaho Islip/Long Island, New York Ithaca/Cortland, New York Jacksonville/Camp Lejeune, North Carolina Juneau, Alaska Kahului, Maui, Hawaii Kalamazoo, Michigan Key West, Florida Knoxville, Tennessee Kona, Hawaii, Hawaii La Crosse, Wisconsin Lansing, Michigan Lexington Kentucky Lihue, Kauai, Hawaii Lincoln, Nebraska Madison, Wisconsin Manchester, New Hampshire Missoula, Montana Moline, Illinois/Davenport, Iowa Montgomery, Alabama Myrtle Beach, South Carolina Naples, Florida Nashville, Tennessee Newport News/Hampton, Virginia Norfolk/Virginia Beach/Port Smith/Chesapeake, Virginia Orange County/Santa Anna/Anaheim, California Peoria, Illinois Pocatello, Idaho Portland, Maine Providence Rhode Island Prudhoe Bay, Alaska Raleigh/Durham, North Carolina Rapid City, South Dakota Redding, California Richmond, Virginia Roanoke, Virginia Rochester, Minnesota Rochester, New York St. Croix, Virgin Islands St. Thomas, Virgin Islands Saginaw/Bay City/Midland, Michigan Salinas/Monterey, California San Juan, Puerto Rico Santa Barbara, California Savannah, Georgia Scranton/Wilkes Barre, Penna. Sioux City, Iowa Sioux Falls, South Dakota South Bend, Indiana Spokane, Washington Springfield, Illinois Springfield, Missouri Syracuse, New York Conforming Applications and Answers are due December 8, 1980.

Subpart Q Applications—Continued

Date filed	Docket No.	Description
Nov. 12, 1980	39851	Laker Airways Limited, c/o Robert M. Beckman, 1001 Connecticut Avenue, N.W., Suite 235, Washington, D.C. 20036. Application of Laker Airways Limited pursuant to Section 402 of the Act and Subpart Q of the Board's Limited pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests amendment of its foreign air carrier permit to authorize the transportation of persons, property and mail in schedule service between Manchester, England and Prestwick, Scotland, on the one hand, and Miami, Florida, and Los Angeles, California, on the other hand. Answers may be filed by December 10, 1980.
Nov. 12, 1980	38952	Eastern Air Lines, Inc., Miami International Airport, Miami, Florida 33148. Application of Eastern Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests amendment of its certificate of public convenience and necessity for Route 131, last amended pursuant to Order 80-5-35, so as to authorize nonstop service between Atlanta, Ga. and coterminal points in Panama. Conforming Applications and Answers are due December 10, 1980.
Nov. 12, 1980	38954	Global International Airways Corp., Ambassador 1, Air World Center, 10920 Ambassador Drive, Kansas City, Missouri 64153. Conforming Application of Global International Airways Corp. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests issuance of a certificate of public convenience and necessity authorizing it to engage in foreign air transportation of property and mail as follows: Between a point or points in the United States, and points in Argentina, Barbados, Brazil, Colombia, the Dominican Republic, Ecuador, Haiti, Jamaica, the Netherlands Antilles, Nicaragua, Mexico, Panama, Peru and Venezuela. Answers may be filed by November 28, 1980.
Nov. 13, 1980	38959	Rich International Airways, Inc., Post Office Box 522067, Miami, Florida 33152. Conforming Application of Rich International Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests authority to (a) provide scheduled foreign air transportation of property and mail as follows: Between a point or point in the United States and points in Argentina, Barbados, Brazil, Colombia, the Dominican Republic, Ecuador, Haiti, Jamaica, the Netherlands Antilles, Mexico, Panama, Nicaragua, Peru, and Venezuela; and (b) To transport, at the expense of the shipper, one or more attendants with any shipment, provided that such attendant or attendants may be transported only when actually accompanying the shipment and may not be transported from the destination of the shipment to its origin or otherwise. Answers may be filed by November 28, 1980.
Nov. 14, 1980	38965	Wings International Airways, Inc., 3318 Queen Lane, Philadelphia, Pennsylvania 19129. Application of Wings International Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests issuance of a new certificate of public convenience and necessity authorizing it to engage in interstate scheduled air transportation of persons, property and mail between New York, N.Y. and Los Angeles, California. Conforming Applications and answers are due December 12, 1980.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 80-36590 Filed 11-21-80; 8:45 am]
BILLING CODE 6320-01-M

[Docket Nos. 33361, 32639, 32640]

Former Large Irregular Air Service Investigation and Applications of Air Transport Miami, Inc.; Assignment of Proceeding

This proceeding has been assigned to Chief Administrative Law Judge Joseph J. Saunders.

Dated at Washington, D.C., November 18, 1980.

Joseph J. Saunders,
Chief Administrative Law Judge.

[FR Doc. 80-36591 Filed 11-21-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket Nos. 38019, 38960 and 38961]

Mainline and Bush Service Mail Rate Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Summary of Orders 80-11-81 and 80-11-82.

SUMMARY: The Board has set temporary rates for Wien Air Alaska's service mail rates and propose to extend the temporary rates to Alaska Airlines in Order 80-11-81. The Board has adopted a new basis for deferring mainline and bush service in Alaska, and is convening a conference to discuss the issues. It is requesting information from interested Alaska carriers by Order 80-11-82.

DATES: Adopted: November 13, 1980. Statements from parties wishing to comment on Wien's final rate due November 21, 1980. Notice of objection to Alaska's rate and the Board's

tentative findings due November 21, 1980 and supporting documents are due November 28, 1980.

ADDRESSES: Comments on Wien's final rates should be filed in Docket 38019; and notice of objections should be filed in Docket 38690, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Barry L. Molar, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. (202) 673-5373.

Supplementary Information:

By Order 80-9-150 the Board embarked on a project to modify the structure of Wien Air Alaska's mail rate compensation for service within the state of Alaska. The existing system consists of a single basic rate category encompassing mainline operations by jet aircraft and bush operations performed with small propeller aircraft. The Board wished to explore the feasibility of establishing separate rates for bush and mainline service.

Order 80-9-150 proposed a new temporary rate structure for Wien and established procedures for the determination of final rates. The Board proposed establishing separate rates for bush and mainline service. Bush service consists of service to small isolated communities in Alaska which are often inaccessible by other means of transportation. Nevertheless, they may generate very small amounts of traffic. Service to these points is generally provided by small propeller aircraft. Mainline service consists of service to larger communities in Alaska which generate greater amounts of traffic, and is provided with large jet or prop-jet equipment. The temporary rates would have consisted of priority and non-priority rates for both bush and mainline service and each would have been a dual element rate consisting of a terminal charge and a linehaul charge. The final rate proceeding would have investigated the use of a similar structure permanently.

The subject orders make a number of revisions to the temporary rate structure and the final rate proceeding. Order 80-11-81 fixes temporary rates for Wien.

The distinction between bush and mainline service is maintained but non-priority bush rates are eliminated. The Board eliminated non-priority bush rates on a temporary basis because comments indicated that all bush mail moved on a priority basis. The Board also abandoned dual element rates and reverted to single element rates. Charges associated with take-off, landing, and ground handling (terminal charges) are lumped with charges associated with actual flying operations to produce a single unit rate. It moved to single element rates because of accounting difficulties in switching to the multi-element rates on a temporary basis. Certain parties had also questioned the Board's allocation of investment expenses and return between terminal and linehaul elements.

The Board also proposes extending the temporary rates to Alaska Airlines. Equalization clauses in Alaskan mail contracts require competing carriers on any route to match the lowest rate set for any individual carrier in order to carry mail. Numerous parties pointed out that the clauses could cause serious distortion in the case of Alaska Airlines, which still operates under system rates, and has extensive route overlap with Wien. The Board tentatively concluded that the best means to deal with this problem is to extend the tiered rates to Alaska Airlines.

The Board also adopted a new basis for defining mainline and bush service. Rather than distinguishing on the basis of points served, the Board will distinguish on the basis of the size of aircraft used. Service with aircraft with maximum payload capacity of 4000 pounds is bush service and service with larger aircraft is defined as mainline. This definition reflects the Board's assumption that bush and mainline service have different cost characteristics.

The final rate proceeding has been extended to include Alaska Airlines, for the reasons discussed above. The procedural schedule has been modified to add a conference before data is submitted. That conference is meant to consider issues such as the use of multi-element rates and non-priority bush rates which arose in connection with temporary rates and questions on the Board's data requirements.

Finally, numerous parties argued that the equalization clause problem affects all carriers in Alaska, and they urged the Board to extend the rates to all Alaskan carriers. The Board declined to do this because of its concern that costs may not be sufficiently consistent across the entire state to justify a single class. However, the Board in a separate order,

80-11-82, requested data from other Alaskan carriers on their operations. When that data is received, the Board will take up the question of a state-wide class rate.

Copies of the complete orders are available by postcard request from Distribution Section, Civil Aeronautics Board, Room 516, 1825 Connecticut Avenue, NW, Washington, D.C. 20428.

By the Civil Aeronautics Board: November 13, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-36592 Filed 11-21-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 38793]

Proposed Approval; Application of Pan American World Airways, Inc. and Pan American World Services, Inc., for Approval Under Section 408 of the Federal Aviation Act of 1958, as Amended, of the Acquisition of Control of Airline Operations Training, Inc.

Notice is given, pursuant to the statutory requirements of section 408(b)(2) of the Federal Aviation Act of 1958, as amended, that I intend to issue the attached order under delegated authority. Interested persons are afforded until December 24, 1980, within which to file comments or request a hearing with respect to the action in the order.

Dated at Washington, D.C., November 19, 1980.

Barbara A. Clark,

Director, Bureau of Domestic Aviation.

[Docket No. 38793]

Application of Pan American World Airways, Inc. and Pan American World Services, Inc. for Approval of Control Relationships Under Section 408 of the Federal Aviation Act of 1958, as Amended

Order of Approval

By application filed October 3, 1980,¹ Pan American World Airways, Inc. and its wholly owned subsidiary, Pan American World Services, Inc. (PAWS),² request that the Board approve without a hearing under section 408 of the Federal Aviation Act of 1958, as amended, Pan American's, through PAWS, acquisition of all of the capital stock of Airline Operations Training, Inc. (Airline Operations), or grant an exemption from the approval requirements of section 408. The applicants also request expeditious consideration.

Airline Operations is a New York corporation having its principal office and

training school location at Great Neck, New York. The school offers Aircraft Dispatcher and Operations, Airline Agents, and Flight Engineer Training programs to airline employees and students seeking opportunities with the airline industry.

PAWS has contracted with Mr. William T. Ferris, the sole owner of Airline Operations, to purchase all of the company's stock, subject to Board authorization within 120 days from the date of execution of the contract on September 10, 1980.

According to the applicants, Airline Operations is a going corporation with the reputation, background, and goodwill which will permit its expansion into the area of training of individuals in activities associated with aeronautics and the acquisition of its stock will permit the continuation of the corporate entity, the capitalization on its reputation and goodwill.

No comments on this application have been received.

We have concluded that Pan American's indirect acquisition of control, through PAWS, of Airline Operations, would not result in a lessening of competition or other anticompetitive consequence, nor would it otherwise be inconsistent with the public interest. The transaction for which approval is sought is similar to others which have been authorized by the Board and does not raise any new substantive issues.³

We further conclude that the transaction will not affect the control of an air carrier directly engaged in the operation of aircraft in air transportation, that no person disclosing a substantial interest in the transaction is requesting a hearing, and that the public interest does not require a hearing.^{4,5}

Pursuant to authority delegated by the Board in its Regulations, 14 CFR 385.3 and 385.13, we find that the acquisition of indirect control of Airline Training by Pan American, through PAWS, should be approved without a hearing under section 408(b)(2) of the Act; and that the request for expeditious consideration should be granted. We also find that this is not a major regulatory action under the Energy Policy and Conservation Act of 1975.

Accordingly, 1. We approve the acquisition of control of Airline Training by Pan American, through PAWS;

2. We grant the request for expeditious consideration; and

3. We retain jurisdiction to reexamine this proceeding at any time for the purpose of revoking, modifying, or terminating this order as may be appropriate in the public interest.

¹ See Braniff Airways, Incorporated, Braniff International Corporation, Order 73-11-8, October 23, 1973 (involving Braniff Education Systems, Inc.).

² Notice of intent to dispose of this application without a hearing has been published in the Federal Register, and a copy of such notice has been furnished by the Board to the Attorney General and the Secretary of Transportation not later than the day following the date of such publication, both in accordance with the requirements of section 408(b)(2) of the Act.

³ The applicants have not requested, nor do we find, that the public interest requires us to exempt from the operations of the antitrust laws any of the parties to the acquisition affected by this order.

¹ The application was amended on November 17, 1980.

² By Orders 75-5-117, May 29, 1975 and 79-11-46, November 6, 1979, the Board approved the control relationship involving Pan American and PAWS.

Persons entitled to petition the Board for review of this order under the Board's Regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon the expiration of the above period unless within such period a petition for review is filed, or the Board gives notice that it will review this order on its own motion.

By Barbara A. Clark,

Director, Bureau of Domestic Aviation.

Phyllis T. Kaylor,

Secretary.

[FR Doc 80-36589 Filed 11-21-80; 8:45 am]

BILLING CODE 6320-01-M

Republic Airlines Subpart Q Restriction Removal Proceeding (Chicago Midway-Sioux Falls)

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (80-11-86).

SUMMARY: The Board is proposing to remove a restriction in Republic's certificate which require service in the Chicago-Sioux Falls market to be provided through the Midway Airport at Chicago.

The proceeding is being processed under the expedited procedures of Subpart Q of the Board's Procedural Regulations. The tentative findings and conclusions will become final if no objections are filed. The complete text of this order is available as noted below.

DATE: All interested persons having objections to the Board issuing the proposed order shall file, and serve upon all persons listed below, no later than December 19, 1980, —, a statement of objections together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections.

ADDRESSES: Objections to the issuance of a final order should be filed in Docket 38857. They should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

In addition, copies of such filings should be served on Republic Airlines, Ozark Air Lines, Western Air Lines; Mayors of Chicago and Sioux Falls; Airport Managers of the Joe Foss Municipal Airport at Sioux Falls and of Chicago-O'Hare and Chicago-Midway; Illinois Division of Aeronautics and the South Dakota Department of Transportation.

FOR FURTHER INFORMATION CONTACT: James Ransom, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW, Washington, D.C. 20428, (202) 673-5197.

SUPPLEMENTARY INFORMATION:

The complete text of Order 80-11-86 is available from our Distribution Section, Room 516, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 80-11-86 to that address.

By the Bureau of Domestic Aviation:
November 14, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-36593 Filed 11-21-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Territorial and International Affairs

Proposed Rules for the Allocation of Watch Quotas for Calendar Year 1981 Among Producers Located in the Virgin Islands, Guam and American Samoa

AGENCY: Import Administration, International Trade Administration, Department of Commerce; Office of Territorial and International Affairs, Department of the Interior.

ACTION: Proposed annual rules.

SUMMARY: Pursuant to Section 3 of the Departments' Codified Watch Quota regulations (15 CFR Part 303), annual rules for calendar year 1981 are being proposed. The Departments propose to reduce the weight assigned to taxes in the allocation formula. Also, several changes are proposed for the Guam allocation. With these exceptions, the rules proposed for 1981 are substantially the same as the 1980 rules.

DATE: Comments must be received on or before January 26, 1981.

FOR ADDITIONAL INFORMATION CONTACT: Mr. Frank W. Creel, who can be reached on 202-377-1660.

SUPPLEMENTARY INFORMATION: The Departments propose to retain in the 1981 rules the two-tier allocation system contained in the 1979 and 1980 rules. They propose to continue in force the same eligibility criteria for second-tier allocations. Minor changes in the language are proposed in order to clarify that the Departments may, for the purposes of Section 3(a) only, make appropriate adjustments in a producer's wage and shipment data to avoid

distortions caused by the shipment of movements and watches assembled in other than the quota year.

Changes in the Virgin Islands industrial incentive program were noted by the Departments last year (44 FR 61403 (1979)) in discussing whether corporate income taxes paid should be eliminated or deemphasized in the allocation formula. It was then determined that carryover liabilities might produce an inequitable effect on some producers if this were done, and a weight of 20 percent was assigned to the income tax factor in the final formula. Carryover liabilities are now believed to be an insignificant factor, and the Departments are proposing a weight of only 5 percent for this factor. All Virgin Islands producers now enjoy industrial incentive benefits including a 90 percent refund of corporate income taxes. The Departments propose to assign two-thirds of the resulting 15 percent weight differential to the wage factor, in accordance with traditional policy of gradually increasing the emphasis given to this important direct contribution to the Virgin Islands economy. The proposed formula would therefore assign a 70 percent weight to wages, 25 percent to shipments and 5 percent to income taxes.

The Departments propose to raise the maximum of wages per person which shall be credited in the allocation of quota from \$16,000 to \$17,000. This change would partly offset the practical lowering of the ceiling by inflation while continuing the Departments' policy of emphasizing local wages.

In Guam, the Departments expect that there will be only one producer in that territory during 1981. The Guam industrial development program provides for corporate income tax rebates of up to 75 percent. Accordingly, the Departments propose to assign a combined weight of 75 percent to wages and income taxes, with the remainder assigned to shipments.

To date there have been no shipments from Guam during 1980. A new firm received an allocation during the year and may make shipments prior to the end of the calendar year. In the event, however, that the firm is unable to commence operations prior to the end of the calendar year, the Departments are proposing to allocate to that firm a 1981 quota on the strength of its new entrant application in 1980, without inviting applications from other firms, and without reference to the allocation formula proposed for Guam, which would apply if the firm makes shipments during 1980. Also due to the expectation that 1980 Guam shipments will be negligible at best, it is inappropriate to

make the size of the first-tier allocation dependent on the level of shipments during 1980. Accordingly, the Departments propose to define the first-tier quota as 60 percent of the total Guam quota.

The Departments propose to invite applications from new firms for the American Samoa quota and for 500,000 units of the Virgin Islands quota. The American Samoa quota has not been used since 1977 and utilization of the Virgin Islands quota has been low and in steady decline since 1977.

For the above reasons, the Departments propose calendar year 1981 watch quota rules as follows:

Section 1. (a) A portion of the 1981 Virgin Islands quota determined in accordance with subsection (b) below will be allocated on the basis of (1) the dollar amount of wages, up to a maximum of \$17,000 per person, paid by each producer during calendar year 1980 to Virgin Islands residents and attributable to each producer's headnote 3(a) watch and watch movement assembly operations, (2) the dollar amount of income taxes paid by each producer during calendar year 1980 attributable to its headnote 3(a) watch and watch movement assembly operations (excluding penalty payments and income tax refunds and subsidies paid by the Virgin Islands government during calendar year 1980), and (3) the number of units of watches and watch movements assembled in the Virgin Islands and entered by each producer duty-free into the customs territory of the United States during calendar year 1980.

(b) In making allocations under this formula, a weight of 70 percent will be assigned to the wage factor, a weight of 5 percent will be assigned to the income tax factor, and a weight of 25 percent will be assigned to the shipment factor. An amount representing that portion of the 1981 Virgin Islands quota equal to the ratio of general headnote 3(a) shipments of watches and watch movements from the territory during 1980 to the total 1980 Virgin Islands quota will be allocated among the producers in the Virgin Islands, in accordance with the allocation factors and weights specified in (a) above.

Section 2. (a) Subject to the provisions of subsection 2(c) below, sixty percent of the 1981 Guam quota will be allocated on the basis of (1) the dollar amount of wages, up to a maximum of \$17,000 per person, paid during 1980 to Guam residents, plus any income taxes paid during calendar year 1980 and attributable to headnote 3(a) assembly operations (less the exclusions listed in Section 1), and (2) the number of units

assembled in Guam and entered duty-free into the customs territory of the United States during 1980.

(b) In making allocations under this formula, a weight of 75 percent will be assigned to the combined wages and income tax factor and a weight of 25 percent will be assigned to the shipment factor.

(c) In the event the 1980 record of wages, taxes and shipments in Guam does not provide reasonable basis for making this portion of the Guam allocation in the manner prescribed above, the Departments may make the allocation pursuant to § 303.5(a)(4) of Title 15 of the Code of Federal Regulations.

Section 3. (a) The portion of the Virgin Islands quota not allocated pursuant to Section 1, except as specified in Section 4, will be allocated among firms meeting the requirements of paragraphs (1) or (2) of this section. Eligible firms will be allocated quota in accordance with the factors and weights specified in Section 1. Allocation of the portion of the Virgin Islands quota under this Section will be made to firms which: (1) Assembled all watch movements shipped during 1980 from unassembled movements having at least 26 discrete components and all watches (that is, cased movements) during 1980 from at least 29 discrete components, including at least 26 movement components and at least 3 case components; or (2) Made wage payments during 1980 in the territory averaging not less than \$.75 per watch movement and \$.95 per watch assembled and shipped into the customs territory of the United States. In determining a firm's eligibility under this criterion, the Departments may make appropriate data adjustments to take into account wages paid for the assembly of units not shipped during 1980 and shipments assembled prior to 1980.

(b) Allocation of the portion of the Guam quota not allocated pursuant to Section 2 may be allocated pursuant to § 303.5(b) of Title 15 of the Code of Federal Regulations.

Section 4. Quota set aside for new firms in the Virgin Islands under subsection 5(b) shall be subtracted from the quota amount allocable under Section 3, before allocations are made pursuant to that subsection.

Section 5. (a) Applications from new firms are invited for the calendar year 1981 American Samoa quota. Due to the limited size of the American Samoa quota, the Departments will allocate that quota to the single firm which offers the best prospect of making a meaningful long-term contribution to the economy of the territory.

(b) Applications from new firms are invited for 500,000 units of the calendar year 1981 Virgin Islands quota.

(c) Applicants for new-entrant quotas must complete applicable sections of Form ITA-334P, copies of which may be obtained from the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Detailed instructions for completing ITA-334P will be provided by the Statutory Import Programs Staff together with copies of the application form.

(d) The Departments will consider new entrant applications only from firms which certify to the Departments that they are able and willing to meet the minimum assembly or wage contribution criteria established in Section 3. Following the Secretaries' determination that a qualifying application has been received, an announcement will be published in the Federal Register establishing a closing date for further applications. The closing date shall be 30 days from the date of such notice. If the Departments do not receive prior to September 1, 1981, a qualifying application for quota set aside by subsection (b) above, that quota may be reallocated among eligible producers pursuant to § 303.5(b) of Title 15 of the Code of Federal Regulations.

Section 6. Reallocation of calendar year 1981 quota that becomes available will be restricted to those firms satisfying the criteria established in subsection 3(a), to any new entrant firms selected pursuant to Section 5 above, and to the new Guam firm selected in 1980, provided its operations at the time of the reallocation satisfy the criteria established in subsection 3(a).

Section 7. As used in Section 3 of these rules.

(a) "Wages" means all wages up to \$17,000 per person paid to residents of the territories employed in a firm's headnote 3(a) watch and watch movement assembly operations. Excluded, however, are wages paid to (i) accountants, lawyers or other professional personnel who may render special services to the firm, (ii) persons assembling non-headnote 3(a) watches and watch movements, (iii) persons engaged in the repair of non-headnote 3(a) watches and watch movements, and (iv) persons engaged in the strapping and packaging of watches. Wages paid to persons engaged in both headnote 3(a) and non-headnote 3(a) assembly and repair activities shall be credited proportionately for their headnote 3(a) activities, provided the firm maintains production and payroll records adequate for the Departments' verification of the headnote 3(a) portion.

(b) "Discrete movement components" means screws, parts, components and subassemblies not assembled together with another part, component or subassembly at the time of importation into the territory. (A mainplate containing set jewels or shock devices, together with other parts, would be considered a single discrete component, as would a barrel bridge subassembly.) Excluded are dials, dial washers, dial screws, hour wheels, hands, automatic mechanisms and related parts, day-date mechanisms and calendar features, and jewels.

Section 8. (a) All firms must, as a condition for receipt of allocations or reallocations based on subsection 3(a) criteria, certify to the Departments that they will not alter assembly operations during calendar year 1981 in a manner which would result in their failure to satisfy the respective criteria.

(b) If the Departments have reason to believe that a producer has not complied with or is not complying with the certification required by subsection (a) of this Section, they may issue an order requiring the producer to show cause within 30 days of receipt of the order why the duty-free quota to which it would otherwise be entitled should not be cancelled or reduced by the Departments.

(Pub. L. 89-805, 80 Stat. 1521 (19 U.S.C. 1202) as amended; 15 CFR Part 303)

Issued at Washington, D.C., on November 19, 1980.

John Greenwald,

Deputy Assistant Secretary for Import Administration, International Trade Administration, Department of Commerce.

Wallace O. Green,

Acting Assistant Secretary for Territorial and International Affairs Department of the Interior.

[FR Doc. 80-36541 Filed 11-21-80; 8:45 am]

BILLING CODE 4310-10-M

BILLING CODE 3510-25-M

DEPARTMENT OF COMMERCE

International Trade Administration

Anhydrous Sodium Metasilicate From France; Antidumping—Final Determination of Sales at Less Than Fair Value

AGENCY: U.S. Department of Commerce.

ACTION: Final determination of sales at less than fair value.

SUMMARY: This notice is to advise the public that, as a result of an antidumping investigation, the Department of Commerce has determined that anhydrous sodium metasilicate from France is being sold in the United States at less than fair value

within the meaning of section 731 of the Tariff Act of 1930, as amended. Sales at less than fair value generally occur when the price of merchandise exported to the United States is less than the price of such or similar merchandise sold in the home market, or to third countries, or less than the constructed value. This case has been referred to the United States International Trade Commission for a determination concerning possible material injury to an industry in the United States.

EFFECTIVE DATE: November 24, 1980.

FOR FURTHER INFORMATION CONTACT: Steve Garment, Office of Investigations, International Trade Administration, Department of Commerce, Washington, D.C. 20230, (202-377-1756).

SUPPLEMENTARY INFORMATION:

Procedural Background

On May 15, 1980, the Department of Commerce received a petition in proper form from counsel on behalf of PQ Corporation, Valley Forge, Pennsylvania, alleging that anhydrous sodium metasilicate from France is being sold at less than fair value within the meaning of section 731, Tariff Act of 1930, as amended (19 U.S.C. 1673 *et seq.*) (the Act). After conducting a summary investigation as required under section 732 of the Act (19 U.S.C. 1673a), we determined that there were sufficient grounds to initiate a full-scale investigation, and published a Notice of Initiation of Antidumping Investigation in the *Federal Register* on June 10, 1980 (45 FR 39324). The period of investigation was October 1, 1979 through May 31, 1980.

On June 30, 1980, the United States International Trade Commission (ITC) determined that there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, by reason of imports of anhydrous sodium metasilicate from France allegedly sold at less than fair value. The ITC published notice of that determination in the *Federal Register* on July 9, 1980 (45 FR 46255). On September 5, 1980, the Department of Commerce published a "Preliminary Determination of Sales at Less than Fair Value and Suspension of Liquidation" in the *Federal Register* (45 FR 58929).

Product Description

Merchandise covered by this investigation is anhydrous sodium metasilicate (ASM) classifiable under item number 421.3400, Sodium compounds: Silicates, Tariff Schedules of the United States Annotated (TSUSA).

Sodium silicates are colloidal solutions, hydrated powders or anhydrous powders and glasses. The ratio of SiO₂ to Na₂O for each type of sodium silicate can vary, and the resulting product will have distinctive characteristics. Sodium metasilicate has a definite crystalline form, a molecular SiO₂/Na₂O ratio of 1:1 and a chemical formula of Na₂SiO₃. It is alkaline and readily soluble in water. Applications include waste paper de-inking, ore flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations.

Nature of the Industry

Approximately 4,908,000 pounds of sodium silicates, valued at \$443,000, were imported from France in 1979. According to information available to the Department, the only significant exporter of ASM from France to the United States is Rhone-Poulenc S.A., a large, multi-divisional corporation which operates mainly in the production and sale of chemicals and related products. During the period of investigation, Rhone-Poulenc exported four grades of ASM to the United States: AN (58 percent of sales), AG (5 percent of sales), AS (22 percent of sales) and AST (15 percent of sales).

Most of these sales are made through Rhone-Poulenc's wholly-owned U.S. subsidiary, although there are also some sales made directly from France to unrelated purchasers in the U.S. Because there are sufficient sales in the home market, we used home market sales to establish foreign market value in order to determine whether or not ASM is being or is likely to be sold at less than fair value.

United States Price

For transactions in which sales were made to U.S. customers through wholly-owned U.S. subsidiaries of the French producer, we used exporter's sales price (ESP), as defined in section 772 (c) of the Act (19 U.S.C. 1677a(c)) to determine the United States price. We calculated ESP on the basis of the selling price from the subsidiary to the first unrelated purchaser in the United States with deduction, where applicable, for French inland freight, ocean freight, insurance, U.S. duty, brokerage, wharfage, U.S. inland freight, U.S. warehousing, discounts, and selling expenses. For transactions in which sales were made directly from France to unrelated U.S. customers, we use purchase price, as defined in section 772(b) of the Act (19 U.S.C. 1677a(b)) to determine the United States price. We calculated purchase price on the basis of the CIF U.S. price

to unrelated U.S. purchasers with deductions, where applicable, for ocean freight, insurance, French inland freight, FOB charges, and commissions.

Foreign Market Value Compared to Purchase Price

We calculated the foreign market value, as defined in § 353.3 Commerce regulations (19 CFR 353.3, 45 FR 8191), on the basis of sales to industrial users in the home market as of the date the imported ASM was purchased or agreed to be purchased. We based the foreign market value on the net sales price to the purchasers who purchased in large, wholesale quantities, taking into account deductions for rebates and French inland freight, where appropriate. In addition, we made an adjustment for differences in packing costs and an adjustment for credit cost differential.

Foreign Market Value Compared to Exporter's Sales Price

We calculated the foreign market value, as defined in § 353.3 Commerce regulations (19 CFR 353.3, 45 FR 8191), on the basis of sales to industrial users in the home market at the time of exportation of the ASM to the United States. We based the foreign market value on the net sales price to these purchasers who purchased in large, wholesale quantities, taking into account deductions for rebates and French inland freight, where appropriate.

We also made adjustments for differences in packing costs and credit costs. Finally, in accordance with § 353.15(c) (19 CFR 353.15(c), 45 FR 8194), we deducted, as an offset, a portion of selling expenses incurred in sales in the home market not greater than selling expenses deducted from the United States price. We discuss claims for additional adjustments to the foreign market value in the following section.

Issues

A public hearing was held on October 3, 1980. Interested persons were provided an opportunity to present written and oral views in accordance with § 353.44(e), Commerce Regulations (19 CFR 353.44(e), 45 FR 8203).

At the public hearing, the respondent requested that we make three adjustments in our calculation of the exporter's sales price and the foreign market value. Those three adjustments are (1) an adjustment for differences in circumstances of sale to reflect the cost of technical services performed by Rhone-Poulenc, S.A., on behalf of its customers in France; (2) an adjustment to reflect the difference in credit costs

between the home market and the United States market; and (3) an adjustment to reflect the cost of inland freight paid by Rhone-Poulenc in home market sales.

With regard to the adjustment for technical services, we have disallowed this claim. Our policy is to require the respondent to document and to demonstrate that the technical services have a reasonably direct bearing on, relationship to, or effect upon the sales under consideration. The respondent failed to establish such a relationship. Consequently, we treated technical services as a general expense for purposes of the selling expense adjustment. Finally, we allowed the other two adjustments, because information supplied by Rhone-Poulenc, and verified by Department officials, supported these claims.

Verification

Prior to the Preliminary Determination, and in accordance with section 733(b)(2) of the Act, the petitioner furnished an irrevocable, written waiver of verification of information received within the first 60 days of the investigation. Consequently, we did not verify this data. We did, however, verify all information submitted after the 60th day of this investigation, if we used that information as a basis for the final determination. We verified this information by examination of freight records, payment records and other internal corporate records provided by Rhone-Poulenc and information provided by various French banks and the Department concerning interest rates in France and the United States, respectively.

Results of Fair Value Comparisons

We made fair value comparisons on all exports of ASM, from France to the United States sold during the period of investigation. Using the above criteria, we found that purchase price and exporter's sales price were lower than the home market price of ASM for all sales, with a weighted-average margin of 60 percent. Increases in margins over those reported in the preliminary determination were largely due to the recalculation of both United States price and foreign market value to reflect corrections in application and magnitude of French inland freight costs.

Final Determination

On the basis of the information developed in the investigation and for the reasons stated above, I hereby determine, pursuant to section 735(a) of the Act (19 U.S.C. 1673d(a)) that

anhydrous sodium metasilicate from France is being sold at less than fair value. In accordance with section 735(c)(1)(A) of the Act (19 U.S.C. 1673d(c)(1)(A)), we are making available to the International Trade Commission ("ITC") the information upon which this determination is based. The Department will provide the ITC with all non-privileged and non-confidential information relating to this investigation. The Department will also make available to the ITC all privileged and confidential information in its files, provided that the ITC confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Department. Suspension of liquidation will remain in effect until further notice, and importers will be required to post a cash deposit, bond or other security in the amount of 60 percent of the FOB value of each such entry or withdrawal.

This determination is published pursuant to § 353.44(f), Commerce Regulations (19 CFR 353.44(f), 45 FR 8203).

Donald A. Furtado,
Acting Under Secretary for International Trade.

[FR Doc. 80-36546 Filed 11-21-80; 8:45 am]
BILLING CODE 3510-25-M

Discrete Semiconductor Device Subcommittee of the Semiconductor Technical Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on August 29, 1980 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act. The Subcommittee was approved for continuation on September 19, 1980 pursuant to the charter of the Committee.

The Discrete Semiconductor Device Subcommittee was formed to study transistor, diode, photoconductive, and thyristor semiconductor devices with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

TIME AND PLACE: December 10, 1980, at 9:30 a.m. The meeting will take place at the Main Commerce Building, Conference Room A, 14th Street and Constitution Avenue NW., Washington, D.C. The Subcommittee will meet only in Executive Session to discuss matters

properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

FOR FURTHER INFORMATION CONTACT:

Mrs. Margaret A. Cornejo, Office of the Director of Licensing, Office of Export Administration, Room 1609, U.S. Department of Commerce, Washington, D.C. 20230. Telephone: 202-377-2583.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 16, 1980, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 11652 or 12065.

A copy of the Notice of Determination to closed meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, Telephone: 202-377-4217.

Dated: November 18, 1980.

Saul Padwo,

Director of Licensing, Office of Export Administration.

[FR Doc. 80-36547 Filed 11-21-80; 8:45 am]

BILLING CODE 3510-25-M

Semiconductor Manufacturing Materials and Equipment Subcommittee of the Semiconductor Technical Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on August 29, 1980 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act. The Subcommittee was approved for continuation on September 19, 1980 pursuant to the charter of the Committee.

The Semiconductor Manufacturing Materials and Equipment Subcommittee was formed to study the technical and strategic value of semiconductor device production equipment and materials for the purpose of maintaining a continuous

review of the export control technical parameters, and the formulation of recommendations to the Commerce Department for parameter updating as appropriate for reasons of national security.

TIME AND PLACE: December 10, 1980, at 9:30 a.m. The meeting will take place at the Main Commerce Building, Room 3708, 14th Street and Constitution Avenue NW, Washington, D.C. 20230. The Subcommittee will meet only in Executive Session to discuss matters properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

FOR FURTHER INFORMATION CONTACT:

Mrs. Margaret A. Cornejo, Office of the Director of Licensing, Office of Export Administration, Room 1609, U.S. Department of Commerce, Washington, D.C. 20230. Telephone: 202-377-2583.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 16, 1980, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 11652 or 12065.

A copy of the Notice of Determination to closed meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, Telephone: 202-377-4217.

Dated: November 18, 1980.

Saul Padwo,

Director of Licensing, Office of Export Administration.

[FR Doc. 80-36548 Filed 11-21-80; 8:45 am]

BILLING CODE 3510-25-M

Steel Trigger Price Mechanism; Preclearance Procedures

AGENCY: U.S. Department of Commerce, International Trade Administration.

ACTION: Establishment of Preclearance Procedures.

SUMMARY: This notice is advise the public that the Department of Commerce has established preclearance procedures under which certain foreign producers or

exporters may ship steel mill products to the United States at prices below the applicable trigger prices without "triggering" an analysis to determine whether an antidumping investigation is warranted.

EFFECTIVE DATE: November 24, 1980.

FOR FURTHER INFORMATION CONTACT:

F. Lynn Holec, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, 202-377-2786.

On October 8, 1980, the Department of Commerce announced its intention to reinstate, with modifications, the steel trigger price program (TPM). Fourth quarter 1980 trigger prices were published in the *Federal Register* of October 21, 1980 (45 FR 69527) for that purpose.

The Department of Commerce uses trigger prices to monitor imports of steel mill products into the U.S. Sales below trigger price indicate possible sales of the subject merchandise at less than fair value within the meaning of Title VII, Tariff Act of 1930, as amended (hereinafter referred to as the Act). In those instances, where imports appear to be priced at less than fair value, the Secretary of Commerce may exercise his authority to self-initiate antidumping investigations.

The Department of Commerce recognizes, however, that there may be certain manufacturers/exporters that can produce and/or export steel to the U.S. at prices below the TPM which are not at less than fair value. Where this is the case, the foreign producer/exporter can avoid the risk of a TPM initiated antidumping investigation by requesting preclearance and cooperating with the Department's preclearance review of the producer's/exporter's production costs and pricing practices.

A number of preclearance requests have already been filed and the requesting companies will be sent a preclearance questionnaire. A list of such companies and the products for which preclearance has been requested follows in Table I. Any additional requests for preclearance should be filed with the U.S. Department of Commerce, International Trade Administration, Import Administration, Office of Compliance, Room 2126, Washington, D.C. 20230. The request may cover any of the categories in the trigger price manual published by the U.S. Department of Commerce for the fourth quarter of 1980. Notice of and opportunity to comment on a preclearance request will be published in the *Federal Register*.

Depending on the results of a preclearance review, a price below the

trigger price may be established for the investigated products. Sales made at or above the preclearance price will not result in a TPM initiated antidumping investigation by the Department of Commerce.

In quarters subsequent to the period of preclearance, the initial preclearance price will be adjusted to maintain a constant ratio to the revised trigger price for the period. Where the applicant determines that subsequent adjustments to the preclearance price has resulted in a price above fair value, a reapplication for preclearance may be submitted. Preclearance will be reviewed for changed circumstances at least annually.

Preclearances granted under preexisting procedures will expire on February 28, 1981. Those companies that wish their preclearance extended without interruption should submit a completed response to a preclearance questionnaire to the Department of Commerce no later than December 31, 1980.

In the preclearance submission to the Department of Commerce, the applicant is required to include the computation of "fair value", as defined by the Act. For the purposes of preclearance, the fair value computation will be based on home market sales of such or similar merchandise unless sales in the home market are at prices which represent less than the cost of production. In that case, "constructed value" as defined by the Act will form the basis of the fair value computation. (For purposes of preclearance, cost of production is the average cost by product category including general and administrative, selling and interest expense, of the merchandise under consideration.)

To complete the computation of "fair value", the home market sales must be adjusted to account for differences in the cost of sales in the U.S. and the home market, including differences in physical characteristics, packing, freight, commissions, insurance, handling, brokerage and any other cost differences incident to transporting the merchandise from the place of shipment to the place of delivery. For purposes of preclearance, adjustments for differences in quantities, level of trade and circumstances of sale, except commissions, will generally not be considered. If below the trigger price, fair value, adjusted where appropriate for the above mentioned cost differences, will be the preclearance price for the trigger price quarter under consideration.

Preclearance questionnaires can be obtained by writing or calling: F. Lynn Holec, U.S. Department of Commerce,

International Trade Administration, Import Administration, Office of Compliance, Room 2126, Washington, D.C. 20230, 202-377-2786.

Any comments on the preclearance procedures or questionnaire should be addressed to: F. Lynn Holec, U.S. Department of Commerce, International Trade Administration, Import Administration, Office of Compliance, Room 2126, Washington, D.C. 20230.

John D. Greenwald,
Deputy Assistant Secretary for Import Administration.

Table 1.—Preclearance requests

Company	Products
Lake Ontario Steel Co	Structurals, Grader Blades.
Quecor Steel Ltd.....	Structural Shapes, Plates, Carbon Bars, Welded Pipe and Tubing.
Richier Steel Corp	Structurals, Structural Tubing Sheets, Deformed Reinforcing Steel.
Laurel Steel Products Ltd.....	Cold Finished Bars, Round and Shaped Wire.
Dofasco	Sheets.
Akstel Inc.....	Sheets, Coils, Structurals, Pipe and Tubing.
Sivaco	Steel Wire Products.
Dominion Bridge Co., Ltd.....	Plates, Bar, Structurals.
Gunnabo Bruks Aktiebolag.....	Stainless Steel Hard/Spring Wire.
Ivaco	Wire Rod.
Brussels Steel Corp.....	Structurals, Coils, Expanded Metal, Plates, Sheet, Pipe and Tubing, Bar Products, Wire Products.
Cappco Tubular Products Ltd.....	Structurals.
Ennisteel Service Centre Inc.....	Structural Shapes, Plates, Light Rails, Concrete Reinforcing Bars, Carbon Bars, Welded Pipe & Tubing, Hot Rolled Sheets, Hot Rolled Strip.
A.J. Forsyth & Co. Ltd.....	Steel Plate.
Burlington Steel.....	Bar.
Mart Steel Corp.....	Structurals, Bars, Plates, Sheets, Tubing Products, Wire Products.
Corinth Pipeworks.....	Pipe & Tubing.

[FR Doc. 80-36560 Filed 11-21-80; 8:45 am]

BILLING CODE 3510-25-M

Expanded Metal of Base Metal From Japan; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: U.S. Department of Commerce, International Trade Administration.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Finding.

SUMMARY: This notice is to advise the public that the Department of Commerce has conducted an administrative review of the antidumping finding on expanded metal of base metal from Japan. The scope of the review covers twenty nine exporters of this merchandise to the United States. The review covers separate time periods for each exporter up to December 31, 1979. This review indicates the existence of dumping

margins in particular periods for certain exporters. The Department is currently conducting review of five additional exporters.

As a result of this review, the Department has preliminarily determined to assess dumping duties for individual exporters equal to the calculated differences between foreign market value and United States price on each of their shipments occurring during the covered periods. Where company-supplied information was inadequate or no information was received, the Department has used the best information available. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 24, 1980.

FOR FURTHER INFORMATION CONTACT: J. Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, (202-377-2704).

SUPPLEMENTARY INFORMATION:

Procedural Background

On January 16, 1974, a dumping finding with respect to expanded metal of base metal from Japan was published in the *Federal Register* as Treasury Decision 74-29 (39 FR 1979). On January 1, 1980, the provisions of Title I of the Trade Agreements Act of 1979 became effective. On January 2, 1980, the authority for administering the antidumping duty law was transferred from the Department of the Treasury to the Department of Commerce ("the Department"). The Department published in the *Federal Register* of March 28, 1980 (45 FR 20511-20512) a notice of intent to conduct administrative reviews of all outstanding dumping findings. As required by section 751 of the Tariff Act of 1930 ("the Act"), the Department has conducted an administrative review of the finding on expanded metal of base metal from Japan.

Scope of the Review

Imports covered by this review are shipments of expanded metal of base metal manufactured in three types (standard, flattened and grating) and various thicknesses. Expanded metal of base metal is currently classifiable under item 652.8000 of the Tariff Schedules of the United States Annotated (TSUSA).

The Department knows of a total of 34 exporters to the United States of Japanese expanded metal of base metal. This review covers 29 of them (4 manufacturers and 25 non-manufacturing exporters) for all time periods for which information is

available, that is, all periods up to December 31, 1979, during which shipments of expanded metal of base metal may have been made to the United States and for which appraisement instructions ("master list") have not been issued. Therefore, different time periods are involved for different companies. The issue of the Department's obligation to conduct administrative review of entries unliquidated as of January 1, 1980 and covered by such master lists is under review. Liquidation has been suspended pending disposition of the issue.

Fourteen companies, including one manufacturer, Kanebo Steel, stated that they did not export expanded metal of base metal in the respective periods reviewed here. The estimated deposit rate for these companies is the most recent information for the firm.

That rate will be the one published in the most recent master list for the firm or, if no such rate exists, the rate found for the firm at the time of the fair value investigation. If there are no such earlier calculations, the rate will be the highest current rate for responding firms.

Twelve companies failed to respond or provided inadequate responses to the Department's latest questionnaire. For these non-responsive exporters we proceeded to use the best information available. The best information is the most recent rate for the non-responding firm unless it is equal to or less than the highest rate among all the rates for responding firms in the current period. If it is equal to or less than the highest rate, the best evidence is the higher of the firm's fair value rate or the highest current rate for responding firms. For those firms not investigated at the fair value stage, the best evidence is the higher of the highest fair value rate or the highest current rate for responding firms.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772(b) of the Act, since all sales were made to unrelated purchasers. In this case purchase price was calculated on the basis of the F.O.B. or C.I.F. packed price to an unrelated purchaser in the United States or to an unrelated Japanese trading company for export to the United States, as appropriate. Where applicable, deductions were made for ocean freight, insurance, shipping charges, inland freight, brokerage charges, U.S. duty, survey charges and loading charges. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price as defined in section 773(a) of the Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. The three manufacturers that exported to the United States during the periods reviewed sold at least 75% of their total production in Japan. The home market prices are based on delivered price with adjustments for inland freight, interest charges and packing differentials where applicable. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Japanese exporter	Time period	Margin (in percent)
Daikure Co., Ltd.	1-1-75/12-31-79	1.4
Daishin Kogyo Co.	9-5-73/12-31-79	1.4
Daitoku Trading Co., Ltd.	11-1-78/12-31-79	4
Eiko Co., Ltd.	1-1-77/ 3-31-79	3.8
	4-1-79/12-31-79	1.4
Fuji Shoko Co., Ltd.	9-5-73/12-31-79	4.9
Hanwa Co., Ltd.	4-1-78/12-31-79	.33
Itohaka International Corp.	1-1-75/12-31-76	3.8
	1-1-77/12-31-79	4.9
Kanebo Steel Co., Ltd. (a.k.a. Kanebo Bldg. & Mfg. Ltd.)	11-1-76/12-31-79	1.4
Kanematsu-Gosho Ltd.	1-1-75/12-31-79	1.4
Kansai Tekko Co., Ltd.	9-5-73/ 3-31-74	2.7
	4-1-74/ 3-31-75	1.7
	4-1-75/11-30-76	0
	12-1-76/ 3-31-78	0
	4-1-78/ 9-30-78	0
	10-1-78/12-31-79	.83
Kawamoto & Co., Ltd.	4-1-78/12-31-79	4.9
Kawashige Kozai Co., Ltd.	4-1-78/ 3-31-79	4.97
	4-1-79/12-31-79	4.9
Kawasho Corp. (mfg. Kanebo)	11-1-76/ 3-31-78	4.9
(mfg. Nippon Steel)	4-1-78/12-31-79	4.9
Kobayashi Metals Ltd.	4-1-78/12-31-79	1.4
Marubeni Corp.	4-1-78/ 3-31-79	1.33
	4-1-79/12-31-79	.33
Mitsubishi Corp.	12-1-76/ 3-31-78	0
	4-1-78/ 9-30-78	0
	10-1-78/12-31-79	.83
Mitsui & Co., Ltd.	1-1-77/12-31-79	4.9
Murata Chemical Co., Ltd.	9-1-73/ 6-30-74	0
	7-1-74/10-31-76	4.9
	11-1-76/ 9-30-78	4.9
	10-1-78/12-31-79	1.4
Nakuaumi Kogyo, Ltd.	4-1-78/12-31-79	4.9
Nichimen Co., Ltd.	1-1-75/ 3-31-79	1.4
	4-1-79/12-31-79	4.9
Nippon Steel Products Co., Ltd.	3-1-74/ 8-31-74	1.3
	4-1-78/ 3-31-79	0
	4-1-79/12-31-79	.33
Nissho Iwai Co., Ltd.	4-1-78/12-31-79	1.33
Nittetsu Shoji Co., Ltd.	4-1-79/12-31-79	1.33
Sansho Kohki Co., Ltd. and Shinwa Kohki (shipper)	1-1-77/ 3-31-78	12.7
	4-1-78/ 3-31-79	6.6
	4-1-79/12-31-79	4
Sumikan Bussan Kaisha, Ltd.	1-1-75/12-31-79	1.4
Sumitomo Shoji Kaisha, Ltd. (a.k.a. Sumitomo Corp.)	1-1-75/12-31-76	0
	4-1-78/ 3-31-79	6.6

Japanese exporter	Time period	Margin (in percent)
4-1-79/12-21-78		4
Sunkenko Corp.	1-1-77/12-31-79	1.4
Taisei International Corp.	1-1-76/12-31-76	0
	1-1-77/12-31-79	4.9
Toyo Menka Kaisha, Ltd.	1-1-75/10-30-76	4.9
	1-1-77/ 3-31-79	4.9
	4-1-79/12-31-79	1.4

¹ No shipments during current period.

Interested parties may submit written comments on these preliminary results on or before December 24, 1980, and may request disclosure and/or a hearing on or before December 9, 1980. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the U.S. Customs Service shall assess duties on all entries made during the time periods involved. Individual statutory values may vary from the percent stated above. The Department will issue appraisement instructions separately on each exporter directly to the Customs Service.

Further, as required by § 353.48(b) of the Commerce Regulations, a cash deposit based upon the most recent of the margins calculated above shall be required on all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results. This requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53, 45 FR 8205).

John D. Greenwald,
Deputy Assistant Secretary for Import Administration.

November 18, 1980.

[FR Doc. 80-36507 Filed 11-21-80; 8:45am]

BILLING CODE 3510-25-M

Portland Cement, Other Than White, Nonstaining Portland Cement, From the Dominican Republic; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: U.S. Department of Commerce, International Trade Administration.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Finding.

SUMMARY: This notice is to advise the public that the Department of Commerce has conducted an administrative review

of the antidumping finding on portland cement, other than white, nonstaining portland cement, from the Dominican Republic. The scope of the review covers the one known producer or exporter of this merchandise. The review covers the period from December 4, 1969 through May 31, 1980. This review indicates the existence of dumping margins for the only known shipments. As a result of this review, the Department has preliminarily decided to assess dumping duties equal to the calculated differences between foreign market value and United States price on those shipments occurring during the period. Since no information was received from the producer, the Department has used the best information available.

Interested parties are invited to comment on this decision.

EFFECTIVE DATE: November 24, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis U. Askey, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-4793).

SUPPLEMENTARY INFORMATION:

Procedural Background

On May 4, 1963, a dumping finding with respect to portland cement, other than white, nonstaining portland cement, from the Dominican Republic was published in the *Federal Register* as Treasury Decision 55883 (28 FR 4507-08). On January 1, 1980, the provisions of Title I of the Trade Agreements Act of 1979 became effective. On January 2, 1980, the authority for administering the antidumping duty law was transferred from the Department of the Treasury to the Department of Commerce ("the Department"). The Department published in the *Federal Register* of March 28, 1980 (45 FR 20511-12) a notice on intent to conduct administrative reviews of all outstanding dumping findings. As required by section 751 of the Tariff Act of 1930 ("the Act") the Department has conducted an administrative review of the finding on portland cement, other than white, nonstaining portland cement, from the Dominican Republic.

Scope of Review

Imports covered by this review are shipments of portland cement, other than white, nonstaining portland cement. It is classifiable under item 511.14 of the tariff Schedules of the United States Annotated (TSUSA). The Department knows of one producer or exporter of portland cement, other than white, nonstaining portland cement, to

the United States. This firm is Fabrica Dominicana de Cemento, C por A. This review covers all time periods, that is, from December 4, 1969 up to May 31, 1980, during which shipments of portland cement, other than white, nonstaining portland cement may have been made to the United States and for which master lists have not been issued. The issue of the Department's obligation to conduct administrative review of entries unliquidated as of January 1, 1980 and covered by lists completed before that date is under review. Liquidation has been suspended pending disposition of the issue.

The Department received no responses to its questionnaires. Therefore, the Department used the margin calculated from the only information available (November, 1969).

United States Price

In calculating United States price, based on the 1969 price information, the Department used purchase price, as defined in section 772(b) of the Act, since all sales were made to unrelated purchasers. Purchase price was calculated on the basis of the ex-factory, packed price to unrelated purchasers in the United States. No adjustments were claimed or made.

Foreign Market Value

In calculating foreign market value, based on the 1969 price information, the Department used home market price, as defined in section 773(a) of the Act. The home market price is based upon the ex-factory, packed price. No adjustments were claimed or made.

Results of the Review

As a result of the comparison of United States price to foreign market value, I preliminarily determine that the margin of 58.33 percent exists. Interested parties may submit written comments on this preliminary determination within 30 days of the date of publication of this notice and may request disclosure and/or a hearing on such determination within 15 days of the date of publication. The Department will publish a notice of the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the U.S. Customs Service shall assess, duties on all entries made during the time periods involved. The relationship between individual statutory values will not vary from the percent stated above. The Department will issue appraisal instructions separately on the shipper directly to the Customs Service. Further, as required by section 353.48(b) of

Commerce Regulations, a cash deposit based upon the margin on the last known shipments, that is, 58.33 percent, will be required on all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results. This requirement shall remain in effect until publication of the results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (93 Stat. 175, 19 U.S.C. 1675(a)(1)) and § 353.53 of Commerce Regulations (19 CFR 353.53, 45 FR 8205).

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

November 18, 1980.

[FR Doc. 80-36506 Filed 11-21-80; 8:45 am]

BILLING CODE 3510-25-M

Maritime Administration

[Docket No. S-679]

Application for Operating-Differential Subsidy by First American Bulk Carrier Corp.

Notice is hereby given that First American Bulk Carrier Corporation, a Delaware corporation, has filed an application dated August 27, 1980, as amended, with the Maritime Subsidy Board pursuant to Title VI (46 U.S.C. 1171-1183) of the Merchant Marine Act, 1936, as amended, for a long-term Operating-Differential Subsidy Agreement to aid in the operation of two 40,000 DWT combination dry bulk/container carriers.

The vessels will be engaged in the worldwide carriage of dry bulk cargoes in the foreign commerce of the United States and the foreign-to-foreign carriage of container cargoes. Primarily employment is to be with bulk cargoes from Australia to the U.S. Gulf and East Coasts, bulk cargoes from the U.S. to Europe and container cargoes from Europe to Australia/New Zealand.

Interested parties may inspect this application in the Office of the Secretary, Maritime Subsidy Board, Room 3099-B, Department of Commerce Building, 14th and E Streets, NW., Washington, D.C. 20230.

Any person, firm or corporation having an interest in such application, and who desires to offer views and comments thereon for consideration by the Maritime Subsidy Board, should submit such views and comments in writing, in triplicate, to the Secretary, Maritime Subsidy Board, by the close of business on December 12, 1980. The Maritime Subsidy Board will consider such views and comments and take such

actions with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance, Program No. 11.504, Operating-Differential Subsidies (ODS))

Dated: November 18, 1980.

By Order of the Maritime Subsidy Board.

Robert J. Patton, Jr.,

Secretary.

[FR Doc. 80-36612 Filed 11-21-80; 8:45 am]

BILLING CODE 3510-15-M

National Oceanic and Atmospheric Administration

Clacton Pier, Ltd.; Receipt of Application for Marine Mammals Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Clacton Pier Ltd.

b. Address: Clacton on the Sea, Essex CO15 1 QX England.

2. Type of permit: Public display.

3. Name and number of animals:

California sea lions (*Zalophus californianus*), 4.

4. Type of take: To take beached/stranded California sea lions for public display if available.

5. Location of activity: Santa Barbara, California.

6. Period of activity: 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register** the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before December 24, 1980. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of

such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and Regional Director, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: November 14, 1980.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 80-36584 Filed 11-21-80; 8:45 am]

BILLING CODE 3510-22-M

Dolfirodam B.V., Gebouw de Hoofdpoort; Marine Mammals Permit Modification Request

Notice is hereby given that Dolfirodam B.V., Gebouw de Hoofdpoort, Blaak 101, 3011 GB Rotterdam, Netherlands, has requested a modification to Public Display Permit No. 299 issued on July 16, 1980, under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is requesting to take an additional Atlantic bottlenose dolphin (*Tursiops truncatus*) as a replacement for an animal which died during acclimation in the United States. The animal will be taken by the means, in the area, and for the purposes set forth in the original permit application.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before December 24, 1980. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above request are available for review in the following offices:

Assistant Administrator for Fisheries, 3300 Whitehaven Street NW., Washington, D.C.; and Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: November 14, 1980.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 80-36583 Filed 11-21-80; 8:45 am]

BILLING CODE 3510-22-M

Gerald L. Kooyman; Issuance of Marine Mammals Permit

On September 12 1980, Notice was published in **Federal Register** (45 FR 60465), that an application had been filed with the National Marine Fisheries Service by Dr. Gerald L. Kooyman, Physiological Research Laboratory, Scripps Institution of Oceanography, University of California, San Diego, La Jolla, California 92093, for a permit to take 2 Atlantic bottlenose dolphins (*Tursiops truncatus*), 10 harbor seals (*Phoca vitulina*), and 15 California sea lions (*Zalophus Californianus*) for the purpose of scientific research.

Notice is hereby given that on November 18, 1980, as authorized by provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Scientific Research Permit for the above taking to conduct physiological studies on the three species of marine mammals subject to certain conditions set forth therein.

This Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW, Washington, D.C., Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, Duval Building, St. Petersburg, Florida 33702, and Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: November 18, 1980.

Robert K. Crowell,
Deputy Executive Director, National Marine
Fisheries Service.

[FR Doc. 80-36585 Filed 11-21-80; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Barkett Oil Co.; Proposed Remedial Order

Pursuant to 10 CFR 295.192 (c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Barkett Oil Company, Inc., 7950 N.W. 58th Street, Miami, Florida 33166. This Proposed Remedial Order charges Barkett Oil Company with pricing violations in the amount of \$204,425, connected with sales of gasoline during the period January 1 through March 31, 1979.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Mr. James C. Easterday, District Manager of Enforcement, Southeast District, 1655 Peachtree Street, N.E., Atlanta, Georgia 30367, Telephone (404) 881-2396. Within 15 days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street N.W., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Atlanta, Georgia on the 13th day of November 1980.

James C. Easterday,
District Manager.

Concurrence:

Leonard F. Bittner,
Chief Enforcement Counsel

[FR Doc. 80-36503 Filed 11-21-80; 8:45 am]

BILLING CODE 6450-01-M

Koch Industries, Inc.; Remedial Order

AGENCY: Department of Energy.

ACTION: Notice of Proposed Remedial Order to Koch Industries, Inc. and Notice of Opportunity for Objections.

Pursuant to 10 CFR 205.192(c), the Special Counsel for Compliance, Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued on October 15, 1980 to Koch Industries, Inc., Post Office Box 2256, Wichita, Kansas 67201.

The Proposed Remedial Order sets forth findings of fact and conclusions of law concerning Koch's failure to supply West Side Distributing Company of Rochester, Minnesota with motor gasoline during the period February, 1979 through April, 1979. The Special Counsel determined that Koch was required to supply West Side with gasoline for the months of February and March, 1979 as a result of Koch's acquisition on March 31, 1978 of Midwest Oil Company. Midwest Oil Company was West Side's base period supplier for those months. As a result of Koch continuing in April, 1978 to function as a wholesale purchaser-reseller while providing West Side with gasoline, the Special Counsel also determined Koch was obligated to supply West Side with motor gasoline in April, 1979. The Order alleges a violation of 10 CFR 211.9(a) (1) and requires Koch to offer to supply West Side with West Side's base period entitlement for these months at the prices in effect at the time the gasoline should have been supplied.

Any person may obtain a copy of the Proposed remedial Order, with confidential information deleted, from the ERA. Requests may be addressed to:

Milton Jordan, Director
Division of Freedom of Information
Forrestal Building
Room 1E-190 1000 Independence Avenue,
S.W.
Washington, D.C. 20585

On or before December 9, 1980, any aggrieved person may file a Notice of Objection in accordance with 10 CFR 205.193. If a Notice of Objection is not

filed, the Proposed Remedial Order may be issued as a final order. Such Notice should be filed with:

Office of Hearings and Appeals
Department of Energy
2000 M Street, N.W.
Washington, D.C. 20461

Issued in Washington, D.C. on November 8, 1980.

Paul L. Bloom,
Special Counsel for Compliance.

[FR Doc. 80-36505 Filed 11-21-80; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Orders

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice that the following Proposed Remedial Orders have been issued. These Proposed Remedial Orders allege violations of applicable law as indicated.

A copy of the Proposed Remedial Orders, with confidential information deleted, may be obtained from Thomas M. Holleran, Program Manager for Product Retailers, 2000 M Street, NW, Washington, DC 20461, phone 202/653-3569. On or before December 9, 1980, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, NW, Washington, DC 20461, in accordance with 10 CFR 205.193.

Issued in Washington, DC, on the 14th day of November 1980.

Robert D. Gerrig,
Director, Enforcement Program Operations
Division, Economic Regulatory
Administration.

Proposed Remedial Orders

Station	Address	Date	Violation amount	Cents per gallon in violation
Southeast District				
Claypool Hill Exxon	Rt. 3 Box 84, Claypool Hill, VA 24260	11-3-80	\$15,313.28	7.9
Howard's Exxon	640 Stockton St., Jacksonville, FL 32204	11-4-80	195.35	1.0
Central District				
George's Standard	1950 South Mannheim Rd., Westchester, IL 60153	11-4-80	\$1,788.43	12.6
George's Standard	10358 W. Roosevelt Rd., Westchester, IL 60156	11-4-80	4,559.36	8.2
Roger's Standard	1006 West Dundee Road, Arlington Heights, IL 60004	11-4-80	389.86	.7
Western District				
Freeway Texaco No. 1	23652 Rockfield Blvd., El Toro, CA 92630	6-23-80	\$6,684.59	5.0
Freeway Texaco No. 2	795 El Camino Real, San Clemente, CA 92672	6-23-80	921.22	3.2

[FR Doc. 80-36504 Filed 11-21-80; 8:45 am]

BILLING CODE 6450-01-M

Gary Energy Corp.; Proposed Remedial Order

Pursuant to 10 CFR § 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives Notice of a Proposed Remedial Order which was issued to the Gary Energy Corp., Four Inverness Court East, Englewood, Colorado, 80112. This Proposed Remedial Order charges the Gary Energy Corp. with pricing violations in the amount of \$270,050.38, connected with the sale of condensate (crude oil) from the Altonah and Bluebell natural gas processing plants during the period September 1, 1973 through March 31, 1977.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Kenneth E. Merica, District Manager of Enforcement, Department of Energy, 1075 South Yukon Street, P.O. Box 26247, Belmar Branch, Lakewood, Colorado, 80226, phone (303) 234-3195. On or before December 9, 1980, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, NW., Washington, D.C., 20461, in accordance with 10 CFR 205.193.

Issued in Lakewood, Colorado on the 18th day of November 1980.

Kenneth E. Merica,
District Manager, Rocky Mountain District,
Economic Regulatory Administration.

Concurrence:

James A. Forrester,
Acting Regional Counsel.

[FR Doc 80-3660 Filed 11-21-80; 8:45 am]

BILLING CODE 6450-01-M

National Helium Corp.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces notice of filing a Petition for the Implementation of Special Refund Procedures for refunds received pursuant to a Consent Order.

DATE: Petition submitted to the Office of Hearings and Appeals:

FOR FURTHER INFORMATION CONTACT: Charles Croxton, Program Manager, Natural Gas Liquid Processors, Office of Enforcement, Room 5003, 2000 M Street, NW., Washington, D.C. 20461, Telephone No. (202) 653-3451.

SUPPLEMENTARY INFORMATION: On February 11, 1980, the Office of Enforcement of the ERA published notification in the *Federal Register* that it executed a proposed Consent Order with National Helium Corporation, (NHC), of Liberal, Kansas on January 30, 1980, which would not become effective sooner than 30 days after publication, 45 FR 9057 (1980). Interested persons were invited to submit comments concerning the terms, conditions or procedural aspects of the proposed Consent Order. In addition, persons who believe they have a claim to all or a portion of the refund of overcharges paid by NHC pursuant to the proposed Consent Order were requested to submit notice of their claims to the ERA.

A second notice was published in the *Federal Register* (45 FR 23051 April 4, 1980), which stated that no comments were received and therefore the proposed Consent Order was finalized.

Pursuant to the consent Order, NHC refunded the sum of \$10,000,000.00 by check made payable to the United States Department of Energy on April 23, 1980. All such funds received by DOE have been placed into a suitable account pending determination of their proper distribution.

The following persons submitted claims to the ERA:

Atlantic Richfield Company

Action taken: The ERA is unable readily to identify the persons entitled to received the \$10,000,000.00 or to ascertain the amounts of refunds that such persons are entitled to receive. The ERA has therefore petitioned the Office of Hearings and Appeals (OHA) on November 5, 1980, to implement Special Refund Procedures pursuant to 10 CFR

Part 205, Subpart V, 10 CFR 205.280 *et seq.* to determine the identity of persons entitled to the remaining refunds and the amounts owing to each of them. Persons who believe they are entitled to all or a portion of the refunds should comply with the procedures of 10 CFR Part 205, Subpart V.

Issued in Washington, D.C. on the 18th day of November 1980.

Robert D. Gerring,
Director, Program Operations Division.

[FR Doc 80-36599 Filed 11-21-80; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Orders

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice that the following Proposed Remedial Orders have been issued. These Proposed Remedial Orders allege violations of applicable law as indicated.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Thomas M. Holleran, Program Manager for Product Retailers, 2000 M Street, NW, Washington, DC 20461, phone 202/653-3569. On or before December 9, 1980 any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, NW, Washington, DC 20461, in accordance with 10 CFR 205.193.

Issued in Washington, DC on the 18th day of November 1980.

Robert D. Gerring,

Director, Enforcement Program Operations
Division, Economic Regulatory
Administration.

Proposed Remedial Orders

Station	Address	Date	Violation amount	Cents per gallon in violation
Central District				
The Floating Clown Restaurant.....	Rt. 2 Box 48, Osage Beach, MO 65065.....	7-2-80	\$1,730.00	9.4
Western District				
Chana's Auto Service Center	240 N. Virgil, Los Angeles, CA 90004	10-12-79	\$1,811.02	7.7
Bell's Texaco Service Garage	3445 Geary Blvd., San Francisco, CA 94118	1-21-80	2,654.23	9.2
Bud Dietrich's Orinda Shell	9 Orinda Way, Orinda, CA 94563	9-27-79	5,398.24	4.3
A's Auto Safety Service	2400 San Bruno Avenue, San Francisco, CA 94134	1-25-80	1,972.54	1.9
Ed's Exxon	8510 Gravenstein Highway, Cotati, CA 94928	1-25-80	3,578.05	5.7

[FR Doc. 80-36600 Filed 11-21-80; 8:45 am]

BILLING CODE 6450-01-M

Gasoline Marketing Advisory Committee; Postponement of Meeting

This notice is given to advise of the postponement of the meeting of the Gasoline Marketing Advisory Committee originally scheduled to be held on December 3 and 4, 1980, from 9:00 a.m. to 5:00 p.m. each day, room 305A of the DOE New York Regional Office, 26 Federal Plaza, New York, New York. Notice of Meeting was published in the issue of November 17, 1980 (45 FR 75742). When the meeting is rescheduled a notice will appear in the Federal Register.

Issued at Washington, D.C. on November 19, 1980.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 80-36694 Filed 11-21-80; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

1980 Manufacturing Industries Energy Consumption Study and Survey of Large Combustors

The U.S. Department of Energy has recently mailed out Form EIA-463, "The 1980 Manufacturing Industries Energy Consumption Study and Survey of Large Combustors," to 10,000 establishments within Standard Industrial Classification Codes 20 to 39 that are likely to have a boiler, gas turbine, combined cycle unit, or internal combustion engine with a maximum design firing rate of 50 million Btu per hour or greater. (The selection of 50 million Btu per hour as the basis for inclusion in this survey relates to the final regulation developed by the Department of Energy and reported in the Federal Register, Friday, June 6, 1980, (45 FR 38276), 10 CFR 500.4 and 500.5.)

Response to this report is mandatory under the Federal Energy Administration Act of 1974 (Pub. L. 93-275) and the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. 95-620). If you did not receive this form and operate a combustor as described above, please contact: Mr. Stephen Dienstfrey, Industrial Survey Manager, U.S. Department of Energy, P.O. Box 2110, Rockville, Maryland 20852, (800) 638-6584.

Issued in Washington, D.C., November 13, 1980.

Albert H. Linden, Jr.,

Acting Administrator, Energy Information Administration.

[FR Doc. 80-36587 Filed 11-21-80; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Solar Energy

[Docket No. CAS-RM-79-303]

Final Report to Congress on the Classification and Evaluation of Electric Motors and Pumps; Availability of Final Report

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) is submitting its report to Congress on the classification and evaluation of electric motors and pumps. The report sets forth standard classifications with respect to size, function, type of energy used, method of manufacture, and other factors, and makes a determination of the practicability and effects of requiring all or part of the classes of electric motors and pumps to: (1) Be tested and labeled in accordance with Federal regulations; and (2) meet performance standards which establish minimum levels of energy efficiency.

DATE: November 24, 1980.

Copies of the final report are available for inspection at the DOE Freedom of Information Office, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, at each DOE Regional Office as follows:

Region, Address and Hours

- I—Analex Bldg., DOE Library, 150 Causeway Street, Boston, MA 02114, (617) 223-5207—8:30 to 5:00
- II—Room 3206, 26 Federal Plaza, New York, NY 10007, (212) 264-4836—8:30 to 5:00
- III—Room 1011, 1421 Cherry Street, Philadelphia, PA 19102, (215) 597-9067—8:00 to 4:30
- IV—8th Floor, 1655 Peachtree Street NE, Atlanta, GA 30309, (404) 881-2696—8:00 to 4:30
- V—Room A-333, 175 West Jackson Blvd., Chicago, IL 60604, (312) 886-5170—8:30 to 4:30
- VI—Room 280, 2626 West Mockingbird Lane, Dallas, TX 75235, (214) 767-7701—8:30 to 4:30
- VII—324 East 11th Street, Kansas City, MO 64106, (816) 374-5182—7:30 to 4:00

VIII—Room 206, 1075 South Yukon St., Lakewood, CO 80226, (303) 234-2420—7:30 to 4:00

IX—Third Floor Reading Room, 11 Pine Street, San Francisco, CA 94111, (415) 556-0305—7:30 to 3:00

X—Room 1992, 915 Second Avenue, Seattle, WA 98174, (206) 442-7303—8:00 to 4:00.

FOR FURTHER INFORMATION CONTACT:

Lewis S. Newman, Office of Industrial Programs, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252-2384 or

Catherine Edgerton, Office of General Counsel, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-9513

SUPPLEMENTARY INFORMATION: DOE has prepared its report to Congress on the classification and evaluation of electric motors and pumps pursuant to Section 342(a) of the Energy Policy and Conservation Act, Pub. L. 94-163, as established by Part 3 of Title IV of the National Energy Conservation Policy Act, Pub. L. 95-619.

The proposed report to Congress on the classification and evaluation of electric motors and pumps was made available to the public for comment on March 17, 1980, and public hearings were held during the month of May. DOE revised the proposed report on the basis of its analysis of information received during the public comment period, as well as its own additional analysis of the economic impacts association with Federal actions.

In its final report, DOE makes the following recommendations with respect to industrial motors:

1. DOE should monitor industry implementation of standardized test procedures.
2. DOE should monitor industry implementation of a more informative labeling program which has been developed on a voluntary basis by industry.
3. Legislative authority to establish minimum efficiency standards should not be requested.
4. DOE monitoring of the market penetration for high-efficiency motors should be undertaken.
5. DOE should continue to assist in development of information designed to accelerate investment in high-efficiency motors.

The following recommendations are made with respect to industrial pumps:

1. DOE should monitor industry implementation of test procedures.
2. DOE should monitor industry implementation of an improved information program on pump efficiency.

3. Legislative authority to establish minimum efficiency standards should not be requested.

4. DOE should work with industry in development of information materials designed to accelerate investment in pumps which would reduce energy consumption.

Issued in Washington, D.C., November 12, 1980.

T. E. Stelson,

Assistant Secretary, Conservation and Solar Energy.

[FR Doc. 80-36602 Filed 11-21-80; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Objection to Proposed Remedial Orders Filed September 29 through October 10, 1980

During the period of September 29 through October 10, 1980, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 on or before December 10, 1980. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearing and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 18, 1980.

Atlantic Richfield Company, Los Angeles, California, BRO-1322, covered products

On October 7, 1980, Atlantic Richfield Co., 515 South Flower Street, Los Angeles, California 90051, filed a Notice of Objection to a Proposed Remedial Order which the DOE Pacific District Office of Enforcement issued to the firm on September 9, 1980. In the PRO the Pacific District found that Atlantic Richfield was improperly computing its increased costs attributable to covered products.

Nemo Landing Marina, Pittsburg, MO, BRO-1321, motor gasoline

On October 7, 1980, Nemo Landing Marina, Star Route, Box 104, Pittsburg, MO 65724, filed a Notice of Objection to a Proposed Remedial Order which the DOE Central District Office of Enforcement issued to the firm on August 29, 1980. In the PRO the Central Enforcement District found that during April 28, 1980 to June 14, 1980, Nemo Landing Marina had been charging prices in excess of the maximum lawful selling price allowed by 10 CFR Part 212.

According to the PRO the Nemo Landing Marina violation resulted in \$1,012.04 of overcharges. This Notice of Objection has been transferred to the Central Regional Center of the Office of Hearings and Appeals for analysis.

Plaquemines Oil Sales Corporation, Belle Chasse, Louisiana, BRO-1320, No. 2 diesel fuel

On October 7, 1980, Plaquemines Oil Sales Corporation (Plaquemines), P.O. Box 430, Belle Chasse, Louisiana 70037, filed a Notice of Objection to a Proposed Remedial Order which the DOE Southwest District Office of Enforcement issued to the firm on September 19, 1980. In the PRO the Southwest District found that during the period November 1, 1973 through August 31, 1975, the firm committed pricing violations in connection with the sale of No. 2 diesel fuel. According to the PRO the Plaquemines violation resulted in \$331,572.44 in overcharges.

Village Standard Service, Elk Grove, Village, IL, BRO-1330, motor gasoline

On October 7, 1980, Village Standard Service, 1501 Busse Road, Elk Grove Village, IL 60007, filed a Notice of Objection to a Proposed Remedial Order which the DOE Central District Office of Enforcement issued to the firm on May 27, 1980. In the PRO the Central Enforcement District found that during August 1, 1979 to April 18, 1980, Village Standard Service had been charging prices in excess of the maximum lawful selling price allowed by 10 CFR Part 212.

According to the PRO the Village Standard Service violation resulted in \$8,437.16 of overcharges. This Notice of Objection has been transferred to the Central Regional Center of the Office of Hearings and Appeals for analysis.

[FR Doc. 80-36603 Filed 11-21-80; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; Week of October 27 Through October 31, 1980

During the week of October 27 through October 31, 1980, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of

objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Acting Director, Office of Hearings and Appeals.

November 17, 1980.

Atlantic Richfield Co., Dallas, Texas; DXE-2235, crude oil.

Atlantic Richfield Co. filed an Application for Exception from the provisions of 10 CFR Part 212, Subpart D. The exception request, if granted, would permit Atlantic Richfield to continue receiving relief which allowed the firm to charge upper tier prices for old oil. On October 31, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

C. F. Lawrence & Assoc., Inc., Midland, Texas; BXE-1385, crude oil.

C. F. Lawrence & Assoc., Inc. filed an Application for Exception from the provisions of 10 CFR Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell all of the crude oil which it produces from the Childress M. I. Masterson Lease for the benefit of the working interest owners at upper tier ceiling prices. On October 30, 1980, the DOE issued a Proposed Decision and Order and tentatively determined that an extension of exception relief should be granted.

Craft Petroleum Company, Inc., Jackson, Mississippi; BEE-1099, crude oil.

Craft Petroleum Company, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception

request, if granted, would permit the firm to sell a certain portion of the crude oil produced for the benefit of the working interest owners from the J. W. Richardson No. 3 Well located in Lincoln County, Mississippi, at market price levels. On October 31, 1980, the DOE issued a Proposed Decision and Order and tentatively determined that exception relief should be denied.

Fuelgas Company, Inc., Washington, D.C.; DEE-6000, propane.

Fuelgas Company, Inc. filed an Application for Exception from the provisions of 10 CFR 212.11(c)(1). The exception request, if granted, would permit Fuelgas to establish a single class of purchaser and pricing structure for two propane marketing firms which Fuelgas has recently acquired and consolidated into one business operation. On October 31, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

Getty Reserve Oil Company, Denver, Colorado; BXE-1342, crude oil.

Getty Reserve Oil Company filed an Application for exception from the provisions of 10 CFR Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell a certain portion of the crude oil which it produces from the SL-071595A and SL-069551 Leases for the benefit of the working interest owners at market price levels. On October 28, 1980, the DOE issued a Proposed Decision and Order and tentatively determined that an extension of exception relief should be granted.

Haber Oil Products, Pleasant Hill, California; BEE-0382, motor gasoline.

Haber Oil Products filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit Haber Oil Products to receive an increased amount of unleaded gas for the purpose of producing gasohol. On October 29, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

J. J. Doherty and Co., Inc., Trenton, NJ; BEE-0739, Gasohol.

J. J. Doherty and Co., Inc. filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit the firm to receive an increased allocation of motor gasoline for the express purpose of blending and marketing gasohol. On October 30, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

McCall Marketing Co., Portland, Oregon; BEE-1280, Gasohol.

McCall Marketing Co. filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit the applicant to receive an additional 5.7 million gallons of unleaded gasoline per year to enable it to expand its gasohol marketing operations. On October 28, 1980, the Department of Energy issued a

Proposed Decision and Order which determined that the exception request be granted in part and that McCall's base period allocation of unleaded gasoline be increased by 350,000 gallons per month.

Montgomery Oil Company, Leeds, Alabama; BEE-0689, Gasohol.

Montgomery Oil Company filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit Montgomery to receive an increased allocation of unleaded gasoline with which to blend gasohol. On October 31, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception from the provisions of the Motor Gasoline Allocation Regulations. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be granted.

Company Name, Case Number, and Location

Lucia Lodge, DEE-5531, Monterey, CA.
Sawyer's Gen. Store, DEE-7206, Raymond, CA.
St. Lucie County, FL, BEE-1026, Ft. Pierce, FL.

The following firms filed Applications for Exception from the provisions of the Motor Gasoline Allocation Regulations. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be denied.

Company Name, Case Number, and Location

Kennedy Oil Co., DEE-5783, Streator, IL.
Louis H. Long, DEE-2610, Rapid City, SD.
Sea Shell Car Wash, BXE-1329, Jupiter, FL.

[FR Doc 80-38502 Filed 11-21-80; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Eastern Division, Pick-Sloan Missouri Basin Program; Final Post-1985 Marketing Plan; Correction

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Corrections in announcement of the final Post-1985 marketing plan for the Eastern Division, Pick-Sloan Missouri Basin Program.

Post-1985 Marketing Plan

The following are corrections in previous Federal Register notice (45 FR 71860) published October 30, 1980. The corrections are on page 71861, column one. In paragraph three, line five, the sentence should read, "Such

commitments will total 35 MW in the summer season and 40 MW in the winter season." In paragraph four, line four, "1.6461 percent" should read "1.6361 percent".

Issued at Golden, Colorado, November 17, 1980.

Robert L. McPhail,
Administrator.

[FR Doc 80-38598 Filed 11-21-80; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[EN-FRL 1674-2]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption

AGENCY: Environmental Protection Agency.

ACTION: Waiver of Federal preemption.

SUMMARY: This decision grants California a waiver of Federal preemption to enforce amendments to its exhaust emission standards and test procedures for new motor vehicles reflecting the adoption of special oxides of nitrogen (NO_x) exhaust emission standards for certain model year vehicles produced by qualified "small-volume, vendor-dependent" manufacturers.

ADDRESS: Information relevant to this decision is available for public inspection during normal working hours (8:00 a.m. to 4:30 p.m.) at: U.S. Environmental Protection Agency, Public Information Reference Unit, Room 2404 (EPA Library), 401 M St., S.W., Washington, D.C. 20460, (202) 755-2808. Copies of the standards and test procedures are also available upon request from the California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, California 95812.

FOR FURTHER INFORMATION CONTACT: Jerry Schwartz, Attorney/Advisor, Manufacturers Operations Division, (EN-340), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 472-9421.

SUPPLEMENTARY INFORMATION:

I. Introduction

By this decision, issued under section 209(b) of the Clean Air Act, as amended (hereinafter the "Act"),¹ I am granting the State of California a waiver of Federal preemption to enforce amendments to its exhaust emission standards and test procedures. These amendments embody the adoption of

¹ 42 U.S.C. 7543 (b) (1977).

special NO_x emission standards for 1980 and 1981 model year passenger cars, and 1981-1982 model year light-duty trucks (LDTs) and medium-duty vehicles (MDVs) with equivalent inertia weight of less than 4,000 pounds,² produced by qualified "small-volume, vendor-dependent" manufacturers.³

Under section 209(b) of the Act, I am required to grant the State of California a waiver of Federal preemption, after opportunity for a public hearing, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards. I must grant a waiver unless I find that the protectiveness determination of the State of California is arbitrary and capricious, that the State does not need its own standards to meet compelling and extraordinary conditions, or that such State standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. State standards and enforcement procedures are deemed not to be consistent with section 202(a) if there is inadequate lead time to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within that time frame, or if the Federal and California certification and test procedures are inconsistent.⁴

For enforcement procedures accompanying these standards, I must grant the requested waiver unless I find that the procedures may cause the California standards, in the aggregate, to

be less protective of public health and welfare than the applicable Federal standards. When I am considering that finding, if the public record of the proceedings before me contains plausible evidence that the California enforcement procedures may cause the California standards, in the aggregate, to be less protective than the corresponding Federal standards, then I must deny the waiver if: (1) California did not make a positive determination as to the protectiveness of the standards when coupled with the new enforcement procedures or (2) California did make such a determination, and the record contains clear and compelling evidence that its determination is arbitrary and capricious.⁵

On the basis of the record before me, I cannot make the findings required for a denial of the waiver under section 209(b)(1) with respect to the amendments to California's exhaust emission standards and test procedures previously delineated; therefore, I am granting the waiver of Federal preemption California has requested.

II. Background

A. Procedural History

The California Air Resources Board (CARB) adopted exhaust emission standards and test procedures applicable to 1979 and subsequent model year passenger cars, LDTs and MDVs that contained, among other things, a 1.0 grams per mile (gpm) NO_x standard beginning in the 1980 model year for passenger cars and in the 1981 model year for LDTs and MDVs with 0-3999 pounds equivalent inertia weight. I granted the State of California a waiver of Federal preemption to enforce these standards and test procedures in three separate waiver decisions.⁶

Subsequent to the waiver decisions, American Motors Corporation (AMC) filed a petition in the United States Court of Appeals for the District of Columbia Circuit challenging my passenger car waiver decision as applied to AMC. Specifically, AMC claimed that the 1.0 gpm 1980 California NO_x passenger car standard for which I granted a waiver of Federal preemption denied AMC, as a qualified "small-volume vendor-dependent manufacturer," the lead time mandated by Congress in section 202(b)(1)(B).

Section 202(b)(1)(B) establishes a Federal NO_x standard of 1.0 gpm applicable to light-duty vehicles (passenger cars) and engines manufactured during and after the 1981 model year. However, this section also provides for a two-year delay in applying the Federal 1.0 gpm standard to certain qualified small-volume manufacturers.⁷ The two-year delay provision was designed to provide small-volume manufacturers who are dependent on other manufacturers for emission control technology (i.e., "vendor-dependent" manufacturers) extra lead time to incorporate into their own vehicles the new three-way catalyst technology developed by other manufacturers and regarded as necessary to meet a 1.0 gpm NO_x standard.⁸

The Court largely upheld AMC's challenges to the California waiver decision.⁹ The Court held that California's 1.0 gpm passenger car NO_x standard, which does not provide AMC any extra time to meet a 1.0 gpm level, is inconsistent with section 202(a)(2) of the Act. Specifically, the Court vacated the June 14, 1978 waiver decision "to the extent it permits California to deny AMC the lead time prescribed by section 202(b)(1)(B) of the Act."

On September 14, 1979, AMC petitioned me to reconsider and amend or modify certain portions of the earlier waiver decisions concerning California's 1981 and later model year LDT and MDV NO_x exhaust emission standards in light of the Court's decision.¹⁰ AMC

⁷ Section 202(b)(1)(B) provides, in part: The Administrator shall prescribe standards in lieu of (the 1.0 grams per vehicle mile standard otherwise required) which provide that emissions of oxides of nitrogen may not exceed 2.0 grams per vehicle mile for any light-duty vehicle manufactured during model years 1981 and 1982 by any manufacturer whose production, by corporate identity, for calendar year 1976 was less than three hundred thousand light-duty motor vehicles world-wide if the Administrator determines that—

(i) The ability of such manufacturer to meet emission standards in the 1975 and subsequent model years was, and is, primarily dependent upon technology developed by other manufacturers and purchased from such manufacturers; and

(ii) Such manufacturer lacks the financial resources and technological ability to develop such technology.

I determined that AMC was a qualified manufacturer and prescribed alternative NO_x standards for 1981 and 1982 for AMC in accordance with this section. 44 FR 47880 (August 15, 1979).

⁸ H.R. Rep. No. 95-564, 95th Cong., 1st Sess., 165-166 (1977). 123 Cong. Rec., S9233 (daily ed. June 9, 1977).

⁹ *American Motors Corp. v. Blum*, 603 F. 2d 978 (D.C. Cir. 1979).

¹⁰ Petition for Reconsideration of the Waiver Decisions for California Exhaust Emissions Standards Applicable to Oxides of Nitrogen for 1981 and Later Light-Duty Trucks and Medium-Duty Vehicles, from William C. Jones, Manager, Vehicle

Footnotes continued on next page

² The amendments are set forth in Section 1960.2 and 1960.3, Title 13, California Administrative Code, for passenger cars, and LDTs and MDVs, respectively. The substance of the amendments is also contained in the following documents:

1. "California Exhaust Emission Standards and Test Procedures for 1980 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," as amended March 5, 1980.

2. "California Exhaust Emission Standards and Test Procedures for 1981 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," as amended March 5, 1980.

3. "California Assembly-Line Test Procedures for 1980 Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," as amended March 5, 1980.

4. "California Exhaust Emission Standards and Test Procedures for 1981 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," as amended March 26, 1980.

5. "California Assembly-Line Test Procedures for 1981 Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," as amended March 26, 1980.

³ Qualified manufacturers are those meeting the requirements of section 202(b)(1)(B) of the Act for relief as a "small-volume, vendor-dependent" manufacturer. See footnote 7, *infra* for the text of that section.

⁴ See section 202(a)(2) of the Act, 42 U.S.C. 7521(a)(2) (1977). See also 45 FR 54126, 54127 (August 14, 1980).

⁵ See 45 FR 9344-9346 (March 7, 1978); H.R. Rep. No. 95-294, 95th Cong. 1st Sess. 301-302 (1977).

⁶ 43 FR 25729 (June 14, 1978) (for California's 1979 and later model year passenger cars); 43 FR 1829 (January 12, 1978) (for California's 1979-1982 model year LDTs and MDVs); and 43 FR 15490 (April 13, 1978) (for California's 1983 and later model year LDTs and MDVs).

argued that since it develops its NO_x emission control technology for LDTs and MDVs by relying on existing emission control technology adapted from passenger cars, it was unable to meet the 1.0 gpm NO_x standard.

To implement the Court's decision, EPA published a notice in the *Federal Register* vacating the passenger car waiver decision to the extent that the decision permits California to enforce against AMC 1980 and 1981 passenger car NO_x standards other than the California 1979 model year NO_x standard of 1.5 gpm.¹¹ This notice and another notice published the same day,¹² also announced that EPA would hold a public hearing on July 24, 1980, to consider whether the 1982 and later model year passenger car standards and the 1981 and later model year MDV and LDT standards, as applied to AMC, are consistent with section 202(a) of the Act and *AMC v. Blum*.¹³ EPA also announced it would consider any timely CARB waiver requests relating to NO_x standards for small-volume manufacturers at the hearing.

In a June 13, 1980 letter to the Administrator,¹⁴ CARB requested a waiver of Federal preemption for amendments to its exhaust emission standards and test procedures and Assembly-Line Test procedures, for 1980 and 1981 model year passenger cars and 1981 and 1982 model year LDTs and MDVs as they applied to qualified small-volume manufacturers. Subsequently, EPA announced that it would consider this waiver request at the July 24, 1980 public hearing.¹⁵

Prior to the hearing, by letters dated July 18 and July 22, 1980, respectively, CARB and AMC indicated that they had reached a tentative agreement regarding the "later model year standards,"¹⁶ and

requested that EPA not reconsider at the hearing the waiver permitting California to enforce the standards the State then had in place for those models and years.¹⁷ At the July 24 hearing, after CARB reiterated this request, EPA indicated that it would hold an additional waiver hearing subsequent to the receipt of the waiver request which CARB contemplated regarding the later model year standards.¹⁸

B. The CARB Waiver Request

CARB's proposed amendments require that a qualified small-volume vendor-dependent manufacturer meet a NO_x standard of 1.5 gpm in the 1980 and 1981 model years with both its certification test vehicles and its individual passenger car engine families and subgroups during production. It also requires that a qualified manufacturer meet a NO_x standard of 1.0 gpm for the average of its entire combined passenger car production for a full calendar year for both the 1980 and 1981 model years. CARB may grant relief from the 1.0 gpm average if the manufacturer encounters unforeseen technical difficulty in meeting these requirements. In no case may individual engine families exceed a NO_x standard of 1.5 gpm.

The amended requirements for LDTs and MDVs (with 0-3999 pounds Equivalent Inertia Weight) are essentially identical to that adopted by CARB for passenger cars. A qualified manufacturer must meet a NO_x standard of 1.5 gpm in the 1981 and 1982 model years with its certification test vehicles and with its individual engine families and subgroups during production. The manufacturer must meet a NO_x standard of 1.0 gpm on the average over the combined calendar year's production of all of its LDTs and MDVs; i.e., the emissions totals of both the year's LDT and MDV production are added together and averaged to determine whether the year's production average meets the 1.0 gpm standard.

later model year passenger cars and 1983 and later model year LDTs and MDVs with inertia weights of 0-3999 pounds produced by qualified "small-volume, vendor-dependent manufacturers."

¹⁷ Letter from Gary Rubenstein, CARB, to Glenn Unterberger, EPA, dated July 18, 1980. Letter from K.W. Shang, AMC, to Glenn Unterberger, EPA, dated July 22, 1980. CARB stated that it would put these standards before the California Board for its consideration at its regular public hearing on August 27 and 28, 1980. Tr. 9.

¹⁸ Transcript of Public Hearing to Reconsider Waiver of Federal Preemption Granted State of California; CARB NO_x Standards as Applied to American Motors Corporation, July 24, 1980 (hereinafter "Tr."), 7-10, 24-27.

III. Discussion

A. Public Health and Welfare

I have already set forth in the introduction the criteria for my review of the public health and welfare issue as it pertains to both exhaust emission standards and accompanying enforcement procedures for which California requests a waiver. With regard to the proposed passenger car standards contained in CARB's waiver request, section 202(b)(1)(B) directs the Administrator to set a Federal NO_x standard for qualified manufacturers for the 1981 and 1982 model years which does not exceed 2.0 gpm. The 2.0 gpm level is the Federal NO_x standard for all passenger cars for 1980. Therefore, the Federal NO_x standard for all model year passenger cars covered by CARB's waiver request is 2.0 gpm. California's NO_x standards as set forth in the CARB waiver request, both in certification and on the assembly line, are numerically more stringent than the applicable Federal NO_x standard. California's hydrocarbon (HC) standards, which are not affected by the waiver request, are also numerically at least as stringent as the Federal HC Standard.

California's passenger car carbon monoxide (CO) standards, however, are not in every case numerically as stringent as applicable Federal standards. For the 1981 model year, one of the optional California CO standards is 7.0 gpm while the applicable Federal standard for that year is 3.4 gpm. When EPA asked how CARB took this fact into account in making its protectiveness determination,¹⁹ CARB replied by citing the legislative history of section 209 of the Act.²⁰ By including the words "in the aggregate" in the 1977 Amendments for that section, Congress intended to authorize California to adopt a mix of standards that "as a package" are at least as protective of public health and welfare as applicable Federal standards.²¹ In this case, as it has done in conjunction with standards associated with other motor vehicles or engine classes, CARB reasoned that NO_x emissions in California pose a more significant threat to public health than do CO emissions. Thus, CARB concluded that its more stringent NO_x standard provided adequate additional "protectiveness" relative to Federal

¹⁹ California determined that its amended regulations are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. See CARB letter, Tr. 12, and CARB Resolutions 80-5 (March 5, 1980), and 80-6 (March 26, 1980).

²⁰ Tr. 17-18.

²¹ H.R. Rept. No. 95-295, 95th Cong. 1st Sess. 302 (1977).

Footnotes continued from last page
Emissions and Fuel Economy Standards, AMC, to Douglas M. Costle, Administrator, EPA, dated September 14, 1979 (hereinafter "Petition for Reconsideration").

¹¹ 45 FR 45359 (July 3, 1980).

¹² 45 FR 45357 (July 3, 1980). The same day EPA published a notice announcing that CARB's motorcycle fill-pipe opening specifications would also be reconsidered at the July 24, 1980 hearing. See 45 FR 45356 (July 3, 1980). This issue will be the subject of a waiver determination to be published in the near future.

¹³ AMC also filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit of that portion of the waiver granted for CARB's NO_x standards applicable to LDTs and MDVs equal to or greater than 4000 pounds. That action has been held in abeyance pending my determination of this waiver decision.

¹⁴ Letter from Gary Rubenstein for Thomas C. Austin, CARB, to Douglas M. Costle, Administrator, EPA, dated June 13, 1980 ("CARB letter").

¹⁵ 45 FR 48942 (July 22, 1980).

¹⁶ The term "later model year standards" refers to the NO_x exhaust emission standards for 1982 and

standards applicable to this engine family to at least compensate for any "protectiveness" lost due to its less stringent CO standard.²² I cannot find that CARB's determination that the State's passenger car standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious.

With regard to CARB's proposed standards for LDTs and MDVs, the California standards are all numerically at least as stringent as the applicable Federal standards. Therefore, according to Section 209(b)(2) of the Act, California's LDT and MDV standards are deemed to be at least as protective of public health and welfare as applicable Federal standards.²³

With regard to the proposed accompanying enforcement procedures applicable to passenger cars, LDTs and MDVs, the public record contains no plausible evidence that the proposed amendments to the Assembly-Line Test (ALT) procedures reduce the protectiveness of these standards. Accordingly, California did not need to make any additional public health and welfare determinations in conjunction with this waiver request.²⁴ Nevertheless, CARB did determine that its amended accompanying enforcement procedures are, in the aggregate, at least as protective of public health and welfare as their Federal counterparts because the changes to the ALT procedures are technical in nature.²⁵ CARB stated that it intends the enforcement procedure amendments to ensure consistency between the ALT procedures for evaluating ALT results and the proposed exhaust emission standards, since the existing ALT procedures did not provide a mechanism for determining compliance by individual engine families with an emission standard expressed in terms of a cumulative average.²⁶ Thus, I cannot find a basis for

denying the waiver on this issue for the proposed amendments to the standards or the accompanying enforcement procedures.

B. Consistency

Under section 209(b)(1)(C), I must grant a California waiver request unless I find that California's standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. Section 202(a) states, in part, that any regulation promulgated under its authority, "shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period."²⁷

1. Lead Time and Technology

No party presented any evidence for either passenger cars or LDTs and MDVs to indicate that compliance with the proposed amendments is technologically infeasible considering available lead time. On the other hand, CARB presented testimony with respect to passenger cars indicating that the proposed amendments are currently technologically feasible for AMC, the only manufacturer which now qualifies for the "small volume manufacturer" relief.

AMC has testified at a CARB hearing that it considers the standards "feasible and acceptable."²⁸ Furthermore, actual certification emission results for 1980 model year AMC vehicles indicate that AMC is currently capable of achieving both the 1.0 gpm cumulative production average standard and the 1.5 gpm certification standard.²⁹ Finally, the cumulative NO_x emissions data for the AMC 1980 passenger car engine families for the period from October 1, 1979, to March 31, 1980, indicate that the cumulative average is 0.68 gpm, well below the 1.0 gpm standard required by the proposed amendments.³⁰

In light of the above discussion, I cannot conclude that qualified manufacturers cannot develop and apply the requisite technology within the available lead time in order to achieve compliance with the proposed California

standards and accompanying enforcement procedures.³¹

2. Cost of Compliance

No party offered any evidence regarding cost of compliance with the proposed amendments for either passenger cars or LDTs and MDVs. In light of the fact that AMC, the only qualified manufacturer to date, has evidenced ability through its 1980 model year passenger car production vehicles to comply with the proposed standards, I cannot find that the cost of compliance with the proposed amendments is so excessive as to warrant denial of the waiver on these grounds.

3. Other Objections to granting the Waiver

To date, AMC is the only manufacturer which has qualified under section 202(b)(1)(B) for extra lead time to meet the 1981 model year Federal 1.0 gpm NO_x standard. The Automobile Importers of America (AIA) testified that there are other small-volume manufacturers that are eligible to qualify for "relief" from Federal NO_x standards under section 202(b)(1)(B). AIA expressed concern that CARB considered only the technological capabilities of AMC in adopting its amended standards, and that what is technologically feasible for AMC may not be feasible for the other potential applicants.³²

CARB testified that the proposed amendments are "of general application" and apply not just to AMC, but to any manufacturer that I determine, pursuant to section 202(b)(1)(B), meets the statutory criteria for small-volume manufacturer relief.³³ CARB stated that if other qualified manufacturers are unable to comply with the proposed regulations, provisions exist for special relief.³⁴ Finally, CARB testified that since AMC was the only manufacturer that had qualified as a "small-volume vendor-dependent" manufacturer under section 202(b)(1)(B), AMC's technological capability information was the only information available for analysis.³⁵

³¹ The standards and accompanying enforcement procedures adopted by California are also consistent with the mandate of the Court in *AMC v. Blum* that made clear that the special problems of small-volume vendor-dependent manufacturers in meeting the 1.0 gpm NO_x standard for passenger cars must be given special consideration.

³² Tr. 28.

³³ Tr. 29.

³⁴ CARB stated it was considering several potential forms of relief, including temporarily raising the standard, or granting relief for one specific engine family. See Tr. 21-22 for a more detailed discussion of the relief available.

³⁵ Tr. 30.

²² Tr. 18.

²³ Sections 209(b)(2) states, "[i]f each State standard is at least as stringent as the comparable applicable Federal standard, such State standard shall be deemed to be at least as protective of health and welfare as such Federal standards for purposes of paragraph (1)." 42 U.S.C. 7543(b)(2) (1977).

²⁴ See the discussion accompanying footnote 5, *supra*.

²⁵ See footnote 19, *supra*.

²⁶ CARB Staff Report 80-3-1, "Public Hearing to Consider Proposed Amendments to Title 13 of the Administrative Code and to the Assembly-Line Test Procedures and to Exhaust Emission Standards for 1980 and 1981 Model Year Passenger Cars," February 4, 1980, p. 10-11; CARB Staff Report 80-5-1, "Public Hearing to Consider Proposed Amendments to Title 13 of the Administrative Code and to the Exhaust Emission Standards and Assembly-Line Test Procedures for 1981 and 1982 Model Year Light-Duty Trucks and Medium-Duty

Vehicles, 0-3999 Equivalent Inertia Weight, March 26, 1980, p. 14; Tr. 19-20.

²⁷ See footnote 4, *supra*.

²⁸ Tr. 14.

²⁹ Tr. 15, 22; CARB submissions at July 24, 1980 hearing, Executive Orders A-17-32, A-17-53, A-17-56, and A-17-57.

³⁰ Tr. 15; CARB supplemental submission, letter to Glenn Unterberger, EPA, from K. D. Drachand, CARB, August 7, 1980.

The Act does not authorize me to deny California a waiver on the grounds supplied in this objection. First, AIA has not provided any evidence regarding the eligibility of these additional manufacturers to qualify for the extra lead time available under section 202(b)(1)(B). Even assuming they were entitled to special lead time considerations, AIA has in no way established that the special consideration provided by CARB would not be adequate for these manufacturers. AIA has not met its burden of proof to enable me to conclude that CARB's regulations are not technologically feasible and to deny the waiver on these grounds.

IV. Finding and Decision

Having given due consideration to the public hearing of July 24, 1980, all material submitted for the record, and other relevant information, I find that I cannot make the determinations required for a denial of the waiver under section 209(b) of the Act, and therefore I hereby waive application of section 209(a) of the Act to the State of California with respect to the following exhaust emission standards and accompanying enforcement procedures:

Amendments contained in Section 1960.2 and 1960.3, Title 13, California Administrative Code, for passenger cars, and LDTs and MDVs, respectively. The substance of the amendments is also set forth in:

1. "California Exhaust Emission Standards and Test Procedures for 1980 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," as amended March 5, 1980.

2. "California Exhaust Emission Standards and Test Procedures for 1981 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," as amended March 5, 1980.

3. "California Assembly-Line Test Procedures for 1980 Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," as amended March 5, 1980.

4. "California Exhaust Emission Standards and Test Procedures for 1981 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," as amended March 26, 1980.

5. "California Assembly-line Test Procedures for 1981 Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," as amended March 26, 1980.

My decision will affect not only persons in California but also the manufacturers located outside the State which must comply with California's standards in order to produce motor vehicles for sale in California. For this

reason, I hereby determine and find that this decision is of nationwide scope and effect.

Dated: November 18, 1980.

Douglas M. Costle,
Administrator.

[FR Doc. 80-36533 Filed 11-21-80; 8:45 am]

BILLING CODE 6560-30-M

[OPTS 50023; TSH-FRL 1679-8]

Premanufacture Notification Information;

Data Transfer to Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will transfer information contained in Premanufacture Notices (PMN's) submitted by manufacturers and importers under section 5 of the Toxic Substances Control Act (TSCA) to Clement Associates, Inc. of Washington, D.C., a subcontractor of an EPA contractor, Walk, Haydel & Associates, Inc. of New Orleans, Louisiana. Some of this information may be claimed to be confidential. Clement Associates will review, analyze, and report to EPA on manufacturing and processing methods, chemical use, exposure, and environmental release information contained in PMN's.

DATE: The transfer of data submitted in PMN's and claimed to be confidential will occur December 1, 1980.

FOR FURTHER INFORMATION CONTACT:

John B. Ritch, Jr., Director, Industry Assistance Office, Office of Toxic Substances (TS-799), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460; Toll-free: (800-424-9065). In Washington, D.C.: (554-1404).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, manufacturers and importers of chemical substances are required to submit PMN's for new chemical substances that they intend to manufacture or import and that are not included in EPA's Initial Inventory of Chemical Substances. To evaluate the information in these PMN's, EPA will require the assistance of outside experts. EPA selected Walk, Haydel & Associates of New Orleans, Louisiana to assist it in evaluating potential risks associated with the manufacture, processing, distribution in commerce, use and disposal of new chemical substances. Walk, Haydel & Associates is also assisting EPA in evaluating the effectiveness and cost of control options to minimize exposure or environmental release of new chemical substances (Contract No. 68-01-6065). The transfer of data to Walk Haydel and Associates

was announced in the *Federal Register* of July 23, 1980 (45 FR 49159). Clement Associates is to assist Walk, Haydel & Associates in the review through a subcontract issued by the latter.

Pursuant to 40 CFR 2.306(j), EPA has determined that it will need to disclose confidential business information to Clement Associates. EPA will provide Clement Associates with information submitted in PMN's on chemical identity, product formulation, and specific processes used to manufacture or process new chemical substances, as well as other information related to the uses, release rates, and exposure levels of new chemical substances. If any PMN information is claimed to be confidential, reports prepared by Clement Associates dealing with this Confidential Business Information will be treated as confidential. After evaluating the information in a PMN, Clement Associates will return the PMN and any reports prepared to EPA.

Since Clement Associates will review information claimed to be confidential, EPA is publishing this Notice to inform all submitters of PMN's that Clement Associates will receive Confidential Business Information from EPA.

Clement Associates is legally required to safeguard from any unauthorized disclosure the PMN's and any information generated during Clement Associates' review. Clement Associates' subcontract specifically prohibits disclosure of any of this information to any third party in any form without written authorization from EPA.

Clement Associates has been authorized under the EPA TSCA Confidential business Information Security Manual to have access to Confidential Business Information. EPA has approved Clement Associates' security plan. EPA's Office of Inspector General has conducted the required inspection of the Clement Associates facilities and has found them to be in compliance with the requirements of the Security Manual. Clement Associates is required to handle in accordance with this Manual all PMN's and any reports prepared by Clement Associates that contain information claimed to be confidential.

Dated: November 12, 1980.

Warren R. Muir,
Deputy Assistant Administrator for Toxic Substances.

[FR Doc. 80-36537 Filed 11-21-80; 8:45 am]

BILLING CODE 6560-31-M

[WH-FRL 1679-5]

Proposed Ground Water Protection**AGENCY:** Environmental Protection Agency.**ACTION:** Public hearings on proposed ground water protection strategy.

SUMMARY: The proposed Ground Water Protection Strategy offers possible management approaches for coordinating efforts to protect the Nation's ground waters and provides background information on current ground water use and contamination, existing State and Federal Laws, and public interest and industry involvement in ground water concerns.

EPA is proposing this strategy in the context of two compelling realities: The need to begin a preventive program to protect the quality of the Nation's ground water in the future and to manage the growing number of instances of significant contamination currently being discovered.

The extent of the problem, its complexities, and the potential for increasing threats to public health and sensitive ecological systems, EPA believes, calls for a careful exploration of how ground water protection efforts can be more effectively directed. This strategy proposes a cooperative effort in understanding and dealing with the further magnitude of this problem.

At the hearings, or through written response, we are soliciting comments on all aspects of the proposed strategy and are especially interested in receiving comments on the following questions:

1. Is the policy goal based upon "present and projected future uses" a sound and workable goal? Conversely, should alternative goals be selected, such as non-degradation for some or all ground waters? What would be the practical implication of such approaches?

2. Are State strategies a useful vehicle for helping to improve State efforts toward ground water protection? For focusing EPA and other federal assistance on State and local concerns?

3. Is ground water classification an effective and useful approach to setting priorities on the protection of significant ground waters? To identifying appropriate areas for siting new hazardous waste disposal facilities and other facilities with the potential for seriously affecting ground-water quality?

4. What are the technical impediments to carrying out a classification system? Are there social, economic or political impediments? What steps should be taken at the Federal, State or local levels to overcome such impediments?

5. What criteria might be devised to ensure appropriate participation of local authorities in the formulation of State ground water protection strategies and in classifying ground waters?

6. Is the proposed system for developing national criteria for ground water classification appropriate for State implementation? Are the associated Federal, State and local responsibilities applicable and useful or should alternative approaches be considered?

7. Is there any basis for concern that the proposed Ground Water Protection Strategy (or any part of it) would preclude or hamper EPA or the States from acting under their "imminent hazard" statutes to protect the public health or to deal with significant environmental threats?

8. Should EPA seek Federal legislation to implement this strategy (or selected parts of it) immediately or should we await additional experience as outlined in the proposed strategy?

9. Are there areas of ground water protection into which the Federal government should not intrude itself? What would be the impact of leaving these areas exclusively to State and local control?

DATES: Public hearings will be held in five cities: January 12-13, 1981, Atlanta, GA., at the Atlanta Marriott, Courtland at International Blvd; and Denver, CO., at the Denver Hilton, 1550 Court Place; January 15-16, 1981, Dallas, TX., in the First International Bldg., 1201 Elm St., 29th Floor Conference Facility; and Philadelphia, PA., at the Social Security Auditorium, 4th and Spring Garden Streets; January 29-30, 1981, in Washington, D.C., at the Health and Human Services Auditorium (North) 330 Independence Ave., S.W. All hearings will begin at 8:30 a.m., local time.

Written public comments should be received on or before February 18, 1981.

FOR FURTHER INFORMATION CONTACT: To submit public comments or for further information, write Ms. Marian Mlay, Associate Deputy Assistant Administrator for Drinking Water, WH-550, Environmental Protection Agency, 401 M St., SW, Washington, D.C. 20460. Requests for copies of the full strategy and expressions of interest in testifying at one of the hearings may be telephoned to 800-424-9159.

Eckardt C. Beck,

Assistant Administrator for Water and Waste Management.

November 18, 1980.

Executive Summary—Ground Water Protection Strategy

The U.S. Environmental Protection Agency (EPA) is proposing this ground water protection strategy in response to a growing concern over the plight of the Nation's ground waters. The public, along with government officials and experts in the field, is aware that instances of ground-water contamination have been discovered in most sections of the country. They are concerned that ground water is vulnerable to even more widespread contamination in the future as our population and industry continue to grow, thus increasing the already staggering volume of waste to be disposed of.

The problem is national in scope. Approximately half of the country's population relies on ground water for its drinking water. And yet protection of those water sources has been inadequate, in large measure because until recently conventional wisdom believed that nature protected our underground water much more than it actually does. Unfortunately, most of our activities on the land directly affect the quality of the ground water underneath.

With growing frequency, newspapers are reporting new instances of ground-water contamination. Dramatic problems such as Love Canal and the Valley of the Drums have attracted national attention, but numerous local situations of ground-water contamination are also of concern. Some examples are:

- South Brunswick, New Jersey, where one-third of the local water supply for this community of 18,000 is unusable now as a result of contamination by a half gallon of solvents daily for a five to ten year period.
- St Louis Park, Minnesota, where creosote contamination from a manufacturing operation built up over many years resulting in some drinking water wells being closed due to a tar-like taste and the discovery of relatively high levels of possible carcinogens in the ground water.
- Thirty square miles of the shallow aquifer table underlying the Rocky Mountain Arsenal near Denver, Colorado, are contaminated by chemical by-products from the manufacture of pesticides and herbicides, resulting in temporary abandonment of a number of domestic, stock, and irrigation wells, and final abandonment of two wells.
- Fifty-one cases have been filed by EPA and the Department of Justice to

force responsible parties to clean up dangerous hazardous waste sites. Of these, 28 involve pollution of ground water, about half of which are drinking water sources.

The contaminants in all these cases are synthetic organic chemicals. Some of these compounds are cancer-causing in laboratory animals. Some are known human carcinogens. Many are highly toxic. Hundreds of thousands of chemical compounds are in use; little is known about and health effects of most, particularly about the impact on human health of various combinations of compounds.

The most frequently found industrial solvents are known to be dangerous to human health. When they appear in ground water they are often in concentrations sufficiently high to present a significant risk to health. Aquifers do not provide the natural dilution or flushing that occurs in surface waters. A contaminant that penetrates ground water tends to form a "plume" of highly contaminated water, moving slowly through the aquifer for years, even decades. Managing instances where contamination is discovered to avoid future public health problems is a major task for the future which is beyond the past experience of most units of state and local governments.

EPA is making major efforts to assist in the cleanup of areas where ground-water problems have been discovered and to take action to find potential threats and prevent future instances of contamination. This is not a simple task: Detecting and cleaning up contamination are difficult and costly operations. And ground water underlies almost the entire country. The little we have learned in recent years has taught us three sobering lessons: the problem is real and dangerous; our present state of knowledge to deal with these problems is limited; and present programs, authorities and resources are inadequate. It is clear that while the cost of protecting ground water will be high, the cost of continuing to ignore the problem is even higher and clearly unacceptable from a public health perspective.

As states mount more aggressive efforts to conduct monitoring and ground-water quality sampling in the future, and as more ground water monitoring is conducted pursuant to the hazardous waste program, more local instances of ground-water contamination will be discovered. The more states look for such problems,

doubtlessly, the more they will find. Also, normal patterns of increased industrial activity will expand the problem. Finally, a significant impact could be caused by other environmental regulations which are closing off the air, surface waters, oceans, and other media as acceptable areas for waste disposal.

The dimensions of the current ground-water problem are becoming unmanageable. There is no single Agency at any level responsible for ground water protection. Ground water management is carried out on a state-by-state basis, with different approaches and implementation in every state. With the growing number of instances of contamination and the addition of new EPA programs affecting ground water, the states and localities may soon be overwhelmed.

Addressing Ground Water Protection

Numerous Federal laws and state programs deal in some way with ground water protection and management. Some parts of the Clean Water Act (CWA)—specifically, Sections 208 and 106—have strengthened state abilities to protect ground water. The Safe Drinking Water Act (SDWA) through its underground injection control and sole source aquifer protection provisions and the Resource Conservation and Recovery Act (RCRA) provide for control of certain hazardous practices and some protection for highly vulnerable areas. Other EPA statutes which regulate toxic substances and pesticides and the surface mining and uranium mill tailings programs administered by other Federal agencies also contribute protection provisions.

In addition, EPA has now before Congress a Superfund program which, when enacted, would help resolve problems caused by abandoned waste disposal sites. This proposal provides the Federal government with both the authority and the resources to clean up abandoned sites; permits speedy action, prior to long judicial proceedings, to prevent and abate situations that may threaten public health; and imposes joint, several, and strict liability on those who caused or are causing the problem. This program would serve as both a deterrent and as a means of recovering cleanup costs.

EPA is pursuing the imminent hazard provisions of existing statutes to protect public health and the environment. It is accelerating its research and development efforts and taking other steps described in greater detail in the full strategy document. Many states are expanding their ground water protection

efforts by implementing federally delegated programs as well as devising protection programs for some sources of contamination not regulated by Federal statute.

Given the extent of the problem, with its complexities and the potential for increasing threats to public health and sensitive ecological systems, it is clear that significantly increased attention must be given to this issue to manage instances where contamination is detected and to initiate preventive programs to avoid ground-water contamination in the future.

Late last year the Administrator of EPA, Douglas Costle, began the formulation of a ground water protection strategy, calling upon representatives of state and local government, business and industry, environmental and academic groups and the public to help. He felt that we must obtain better insights into this problem and clarify how, and in what policy direction, our nation should proceed. It is hoped that this strategy will help to bring focus to uncoordinated efforts, better enabling us all to protect this resource. This strategy should help to develop more effective relationships among Federal, state and local governments in working together on these problems.

This strategy is not a detailed implementation plan. It addresses broad policy issues rather than narrow technical choices. It emphasizes a preventive approach rather than concentrating on the clean-up of known sources of contamination; not that the latter is not a vital need, but it is already beginning to occur as a consequence of existing legislation and the proposed Superfund program. The strategy is an attempt to look to the future to assure that the quality of ground water is protected as a resource for future generations and to explore new approaches to ground water protection.

The strategy focuses on key issues that are critical to ground-water *quality* in order to have the most impact. For example, it is not intended to deal with tap water issues, such as current or proposed drinking water standards or treatment technologies. Likewise, the ground-water depletion issue is not a major focus. While depletion is a critical issue in many sections of the country, it relates to this strategy only as a problem that can contribute to ground water quality problems, not as an independent issue.

EPA is not proposing new Federal legislation. The immediate challenges seem to be ones of coordination, follow-through and implementation. As

implementation of the existing programs is completed and more time and effort are devoted to the protection of ground water, the need for additional legislation or significant new programs will be assessed.

Given the far-reaching aspects of the problem, the ground water protection strategy is being developed with broad public debate and participation. Workshop discussions, which included some 80 participants from all levels of government and from industry, public interest groups, and academia, were instrumental in drafting this strategy. Public comments based on public hearings and the publication of this proposal in the *Federal Register* will be considered in the final formulation of the ground water protection strategy.

Goal and Objectives

The proposed goal for the ground water protection strategy is:

It shall be the national goal to assess, protect, and enhance the quality of ground waters to the levels necessary for current and projected future uses and for the protection of the public health and significant ecological systems.

This goal recognizes that all ground water is not of the same value. The goal is primarily preventive, rather than curative. Of course, newly discovered ground-water quality problems must be remedied to the extent possible to mitigate against imminent hazards, but the long-term objective of the strategy is to prevent ground-water contamination before it occurs, rather than to clean it up after the fact.

The objectives of this ground water protection strategy are:

By 1985

- To initiate ground water protection strategies in all States, aimed at meeting the goal and the long-term objectives and to develop the necessary institutional capacities (resources, personnel, legal authorities, etc.) at the State and local levels.
- To implement fully the currently enacted Federal regulatory programs which affect ground water (e.g., Resource Conservation and Recovery Act (RCRA), Underground Injection Control Program (UIC), and Surface Mining Reclamation Act) and Superfund when enacted.
- To launch efforts to evaluate ground-water quality, to ameliorate the most hazardous conditions discovered, and to develop and implement technical and administrative methods of managing newly discovered plumes of ground-water contamination.

- To provide a process whereby State and local governments and the public, in specific situations, with adequate public health and environmental protection, can set priorities among competing activities which may use or contaminate ground water.

By 1990

- To ensure that appropriate levels of protection are being provided for the ground water resources in each State and that each State has a complete program which has been fully implemented to manage all ground water.

Management Approach

The management approach proposed in this strategy includes four key elements:

First, *state ground water protection strategies* to be developed by the states. States will be encouraged to devise strategies which identify how this goal, as well as state and local goals and consistency across state boundaries, will be met through specific regulatory and other program actions at the state and local levels. These will be fostered and may be partially funded as part of the State/EPA Agreements (SEAs).

Second, *ground-water classification*. The principal premise of a classification system is that different levels of protection can be provided to ground water according to a number of factors. The classification process should help sort out the high priority ground-water areas for high levels of protection and for first attention and investment, and assist in identifying those areas least environmentally sensitive for siting of future waste disposal facilities or other potentially polluting activities.

Classification decisions about the appropriate levels of protection for individual ground waters would be based on such factors as: Present and projected future uses; current quality; yield, or volume of water available; availability of alternative water supplies; and vulnerability to contamination, that is, the degree of natural protection afforded by local hydrology and geology.

Until a classification system is developed with full public participation and adopted, EPA will maintain a policy that where ground water is currently of drinking water quality or better, it will be provided protection to ensure that its utility for this use is not impaired.

Third, *minimum national requirements for selected high priority problems*. There are some problems which, on a national scale, are so severe and complex that national standards are

appropriate. Examples include highly toxic chemicals and pesticides where product bans or restrictions are appropriate. The Underground Injection Control Program and the Hazardous Waste Regulations under RCRA provide national requirements for selected problems, including their imminent hazard provisions. Other ubiquitous problems will be reviewed for possible federal action.

Fourth, *EPA administrative action*. This includes EPA action to coordinate and bring consistency among existing EPA and other federal programs with ground water protection authorities. It will include action by EPA to encourage and assist states to expand monitoring to detect contamination, to begin developing ground water protection strategies through State/EPA Agreements, to increase research and development and, to the extent possible, to provide technical assistance to state programs. In addition, EPA intends to continue its involvement of the public and numerous institutions in the implementation of this strategy.

Technical Requirements

A range of technical requirements will be needed under this ground water protection strategy due to the variety of problems affecting ground-water quality.

There are four types of technical requirements which are expected to be used extensively under this strategy. (Other approaches, such as economic incentives, may also prove effective.) The four principal approaches are siting practices, best management practices, technology-based or effluent standards, and performance standards. These are described in the full strategy document.

[FR Doc. 80-36536 Filed 11-21-80; 8:45 am]

BILLING CODE 6560-29-M

[SA-FRL 1679-2]

Science Advisory Board, Sampling Protocol Study Group; Meeting

Under Pub. L. 92-463, notice is herein given for a meeting of the Sampling Protocol Study Group of the Science Advisory Board of the U.S. Environmental Protection Agency to be held on December 11, 1980 starting at 9 a.m. and ending at 4:30 p.m. The meeting location is:

Environmental Protection Agency,
National Enforcement
Investigations Center, Building No.
53, General Conference Room,
Denver Federal Center, Denver,
Colorado 80225.

The purpose of this meeting is to provide a review of the proposed exposure assessment approach to be

used by the Office of Health and Ecological Assessment, Office of Research and Development.

The Meeting is open to the public. Because of limited seating capacity, members of the public desiring to attend should preregister by close of business December 4, 1980. Please call Dr. Douglas Seba, Executive Secretary, or Joanna A. Foellmer, secretary, of the Science Advisory Board at 202-472-9444 to preregister or obtain information about the meeting.

Richard M. Dowd,
Staff Director, Science Advisory Board.
November 14, 1980.

[FR Doc. 80-38534 Filed 11-21-80; 8:45am]

BILLING CODE 6560-34-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement Regarding Eligibility To Make Application To Become an Insured Bank Under Section 5 of the Federal Deposit Insurance Act

AGENCY: Federal Deposit Insurance Corporation.

SUMMARY: This statement is to provide information and guidance to financial institutions regarding their eligibility to make application to become an FDIC-insured bank, and the standards which will be applied in considering applications for deposit insurance.

FOR FURTHER INFORMATION CONTACT: Roger A. Hood, Assistant General Counsel, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. (202/389-4628).

SUPPLEMENTARY INFORMATION: In response to inquiries regarding the eligibility of financial institutions to make application to the Federal Deposit Insurance Corporation to become an insured bank under Section 5 of the Federal Deposit Insurance Act (12 U.S.C. 1815), and the standards to be applied in considering insurance applications the Board of Directors of the Federal Deposit Insurance Corporation has authorized the release of the following statement.

The Monetary Control Act of 1980 (Title I of Pub. L. 96-221) requires the maintenance of reserves against transaction accounts and nonpersonal time deposits held by depository institutions, beginning November 1, 1980.

Section 103 of that Act defines the term "depository institution" to include, in addition to other designated institutions, "any bank which is eligible to make application to become an insured bank under Section 5 of [the Federal Deposit Insurance] Act."

Section 5 of the Federal Deposit Insurance Act provides that any State nonmember bank, upon application to and examination by the Federal Deposit Insurance Corporation and approval by the Board of Directors, may become an insured bank. In addition, in order to be eligible to make application to become an insured bank, a bank must be engaged in the business of receiving deposits other than trust funds.

Although the Federal Deposit Insurance Act does not define the term "bank," the FDIC, throughout its history, has required that a State-chartered financial institution be chartered by its State of incorporation as a bank if that institution is to be regarded as a bank by the FDIC. Many institutions are chartered under State laws to engage in one or more of the functions traditionally engaged in by banks. In determining a financial institution's status as a bank, the FDIC will look to the characterization of the institution by the laws under which the institution is created. Similarly, to be considered a bank for purposes of FDIC insurance, an institution must be engaged in the business of receiving deposits other than trust funds. The authority to receive deposits is not a generally recognized implied power of a corporation. Such power must be expressly conferred, and will not be presumed from a grant of authority to receive funds evidenced by certificates of indebtedness, certificates of investment or similar instruments which may not, under the law of the State of incorporation, be denominated as deposits.

With respect to becoming an insured bank and a member of the Federal Deposit Insurance Corporation, the question of eligibility to make application to become an insured bank is a threshold question. Any institution found to be a State bank engaged in the business of receiving deposits other than trust funds will be regarded as eligible to make application to become an insured bank, but the Federal Deposit Insurance Act requires that in considering any such application, the FDIC's Board of Directors will give consideration to the factors stated in Section 6 of the Federal Deposit Insurance Act (12 U.S.C. 1816). These factors are: The financial history and condition of the bank, the adequacy of its capital structure, its future earnings prospects, the general character of its management, the convenience and needs of the community to be served by the bank and whether or not its corporate powers are consistent with the purposes of the Federal Deposit Insurance Act. In applying the factor

relating to the consistency of corporate powers the Board of Directors will be guided by the standards, powers and functions applicable to or associated with commercial banks. Applicants which, although eligible to make application to become an insured bank, are found by FDIC's Board of Directors, upon consideration of any of the foregoing statutory factors, to constitute unacceptable risks to the Federal deposit insurance fund will be denied membership in FDIC.

Under existing regulations of the Federal Deposit Insurance Corporation, insured State nonmember banks, with respect to interest payable on deposits, are subject to the limitations prescribed in § 329.6 of FDIC's Regulations (12 CFR 329.6) unless they are within the definition of "mutual savings bank" prescribed in § 329.7(a) of those regulations (12 CFR 329.7(a)). "Mutual savings banks" may pay the higher rates of interest on deposits prescribed by § 329.7 of those regulations (12 CFR 329.7). Any changes in the rates prescribed in Part 329 will be promulgated by the Depository Institutions Deregulation Committee pursuant to authority granted to that Committee by Section 203 of the Depository Institutions Deregulation Act of 1980, Title II, Pub. L. 96-221, 94 Stat. 142 (12 U.S.C. 3502).

By Order of the Board of Directors,
November 17, 1980.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 80-38501 Filed 11-21-80; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

FMCS Arbitration Services Advisory Committee; Recertification

Pursuant to Section 9(c) of the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Federal Mediation and Conciliation Service announce the intent to file recertification with the appropriate committees of the Senate and the House of Representatives on or before December 8, 1980.

The objectives of the committee are as follows: (1) Advise the Director of FMCS on the means and methods of providing better arbitration services; (2) review and evaluate the existing criteria for determining selection of applicants to the FMCS roster of arbitrators; (3) advise on the promulgation of new criteria to be utilized in selecting applicants; (4) advise on means to

achieve a more efficient and effective utilization of the existing roster of arbitrators; (5) advise the Director of Arbitration Services on ways to utilize training programs and other technical assistance to and in improving arbitration services; (6) serve as a forum for exchange of ideas and opinions of interested persons.

Additional information regarding the FMCS Arbitration Services Advisory Committee may be obtained from John Grimes, Advisory Committee Management Officer, Federal Mediation and Conciliation Service, Washington, D.C. 20427, telephone: 653-5226.

Dated: November 18, 1980.

Wayne L. Horvitz,
Director.

[FR Doc. 80-36531 Filed 11-21-80; 8:45 am]

BILLING CODE 6732-01-M

FEDERAL RESERVE SYSTEM

CDL Corp.; Proposed Retention of Insurance Activities

CDL Corporation, Hallock, Minnesota, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain control of the assets of Northwestern Insurance Agency, Hallock, Minnesota.

Applicant states that it would continue engage in general insurance activities in a community that has a population not exceeding 5,000. These activities would be performed from an office of the Applicant located in Hallock, Minnesota, and the geographic areas to be served are Kittson County, Minnesota. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflict of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of

fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than December 17, 1980.

Board of Governors of the Federal Reserve System, November 17, 1980.

Jefferson A. Walker,
Assistant Secretary of the Board.

[FR Doc. 80-36553 Filed 11-21-80; 8:45 am]

BILLING CODE 6210-01-M

Great Plains Bank Corp.; Formation of Bank Holding Company

Great Plains Bank Corporation, Eureka, South Dakota, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 98 percent of the voting shares of Eureka State Bank, Eureka, South Dakota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 11, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 17, 1980.

Jefferson A. Walker,
Assistant Secretary of the Board.

[FR Doc. 80-36554 Filed 11-21-80; 8:45 am]

BILLING CODE 6210-01-M

acquire control of the assets of Northwestern Insurance Agency, Hallock, Minnesota.

Applicant states that it would engage in providing general insurance activities in a community with a population not exceeding 5,000. These activities would be performed from an office of the Applicant located in Hallock, Minnesota, and the geographic areas to be served are Kittson County, Minnesota. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 17, 1980.

Board of Governors of the Federal Reserve System, November 17, 1980.

Jefferson A. Walker,
Assistant Secretary of the Board.

[FR Doc. 80-36555 Filed 11-21-80; 8:45 am]

BILLING CODE 6210-01-M

Strong City Banco, Inc., Formation of Bank Holding Company

Strong City Banco, Inc., Strong City, Kansas, has applied for the Board's approval under 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 97.8 per cent or

more of the voting shares of Strong City State Bank, Strong City, Kansas. The factors that are considered in acting on the application are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received no later than December 17, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 17, 1980.

Jefferson A. Walker,
Assistant Secretary of the Board.

[FR Doc. 80-36557 Filed 11-21-80; 8:45 am]

BILLING CODE 6210-01-M

Valley Bancshares, Inc.; Formation of Bank Holding Company

Valley Bancshares, Inc., Kalispell, Montana, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Valley Bank of Kalispell, Kalispell, Montana. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 17, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 16, 1980.

Jefferson A. Walker,
Assistant Secretary of the Board.

[FR Doc. 80-36558 Filed 11-21-80; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National advisory body scheduled to assemble during the month of December 1980.

National Commission on Alcoholism and Other Alcohol-Related Problems

December 8: 11 a.m.—Open. Hubert H. Humphrey Building, Room 727A, 200 Independence Avenue SW., Washington, D.C. 20201.

Contact: Mr. Frank Hoban or Mr. Benedict Latteri, 5600 Fishers Lane, Room 17A-09, Rockville, Maryland 20857, (301) 443-3806.

Purpose: The Commission will conduct a study of alcoholism and alcohol-related problems by: assessing unmet treatment and rehabilitation needs of alcoholics and their families; assessing personnel needs in the fields of research, treatment, rehabilitation, and prevention; assessing integration and financing of alcoholism treatment and rehabilitation into health and social health care services within communities; studying the relationship of alcohol use to aggressive behavior and crime; studying the relationship of alcohol among family members; evaluating the effectiveness of prevention programs; surveying the unmet research needs in the area of alcoholism and alcohol-related problems; surveying the prevalence of occupational alcoholism and alcohol abuse programs offered by Federal contractors; and evaluating the needs of special and underserved population groups, including American Indians, Alaskan Natives, youth, the elderly, women, and the handicapped and assessing the adequacy of existing services to fulfill such needs.

Agenda: The entire meeting will be open to the public. Agenda items include: Discussion of Federal Alcohol Programs and Initiatives and Organizational Issues of the National Commission.

Substantive program information may be obtained from: Mr. Frank Hoban, Executive Officer, 5600 Fishers Lane, Room 17A-09, Rockville, Maryland 20857, (301) 443-3806.

Attendance by the public will be limited to space available. Mr. Frank Hoban will furnish, upon request, summaries of the meeting and a roster of the Commission members. This information can be obtained from the National Commission on Alcoholism and Other Alcohol-Related Problems, 5600 Fishers Lane, Room 17A-09, Rockville, Maryland 20857, (301) 443-3806.

Dated: November 20, 1980.

Frank Hoban,
Executive Officer, National Commission on Alcoholism and Other Alcohol-Related Problems.

[FR Doc. 80-36793 Filed 11-21-80; 10:46am]

BILLING CODE 4110-88-M

Collaborative Program on the Psychobiology of Depression—Biological Studies; Invitation of Cooperative Agreement Applications for Data Analyses

AGENCY: National Institute of Mental Health.

ACTION: Notice on invitation of cooperative agreement applications for data analyses under the NIMH Collaborative Program on the Psychobiology of Depression—Biological Studies.

SUMMARY: The National Institute of Mental Health (NIMH) announces that it will accept applications from clinical investigators to assist in the analysis of behavioral data from the ongoing NIMH Collaborative Program on the Psychobiology of Depression—Biological Studies. It is NIMH's intention to make only one cooperative agreement award based on the response to this notice.

DEADLINE FOR RECEIPT OF APPLICATIONS: January 23, 1981.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen H. Koslow, National Institute of Mental Health, Room 10C-24, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443-1504.

SUPPLEMENTAL INFORMATION:

Cooperative Agreement: The NIMH invites interested investigators to submit applications to assist in the design and analysis of behavioral data resulting from ongoing studies (of the Collaborative Program on the Psychobiology of Depression—Biological Studies). It is the intention of the NIMH to award only one approved application, and this award will be made via a cooperative agreement which will involve substantial NIMH staff participation during the award. NIMH staff participation includes contributions to the design of the research program, coordination and monitoring of data collection and data analysis activities among investigators, direction of meetings, and preparation and publication of reports in scientific journals. The NIMH will make data processing services available to the awardee. The period of support will be for two years at the level of approximately \$10,000 per annum total

direct costs. Catalog of Federal Domestic Assistance Number is 13.242, Mental Health Research Grants, and support is authorized under the Public Health Service Act, Section 301(c); Pub. L. 78-410 as amended, (42 U.S.C. 241, 242a). OMB Circular A-95 State and local clearinghouse review is not required for this program.

The purpose of this cooperative agreement is to support the development of appropriate data analytic methods for assessing patients' behavioral states and traits which have been measured by the different instruments used in these ongoing studies. More specifically, this will involve constructing and developing appropriate approaches to the analysis of behavioral data associated with subtypes of depression, and examining available data in order to develop reliable measures of outcome in the treatment of depression with tricyclic antidepressants.

Criteria used in the review of applications received in response to this announcement are as follows:

- (1) Adequacy of resources;
- (2) Experience with the different live and video assessment techniques utilized;
- (3) Ability to work with the various collaborating centers;
- (4) Publication history in this area of research.

Availability of Additional Information

The NIMH encourages persons interested in applying for this award to contact Dr. Stephen Koslow, Project Director for this program, (whose address and phone number are given above) for a statement of guidelines for preparing the application. Because this project is intended to assist in the analysis of behavioral data obtained from the current collaborative program on depression, the NIMH believes that information about the program up to now is essential in order to prepare an application.

Application kits (PHS 398) can be obtained from the Grants Operation Section, NIMH, Room 7C-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All applications should be submitted to Division of Research Grants, NIH, Westwood Building, 5333 Westbard Avenue, Bethesda, Maryland 20205.

Robert L. Trachtenberg,

Deputy Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 80-36488 Filed 11-21-80; 8:45 am]

BILLING CODE 4110-88-M

Office of Human Development Services

Family Median Income by State; Eligibility for Social Services

Under the provision of sections 2002(a)(5)(B), 2002(a)(6) (A) and (B), and 2002(a)(14)(A) of title XX of the Social Security Act, promulgation is made of the median income of a family of four for each State, the District of Columbia, and the States as a whole applicable to the period October 1, 1981 through September 30, 1982. For those States whose 1982 fiscal year begins before or after October 1, 1981, this promulgation is also applicable. The purpose of the promulgation is to determine the extent of Federal financial participation (FFP) in State expenditures under title XX. The above listed sections impose certain limitations with respect to the availability of FFP based upon the relationship of the income of the family of a service recipient to the median income of a family of four in the State.

Estimates of the median income of four-person families for each State and the District of Columbia were developed by the Bureau of the Census. In developing the median income scales, the Bureau of the Census used the following three sources of data:

(1) The March 1980 Current Population Survey; (2) the 1970 Census of Population; and (3) per capita personal income estimates from the Bureau of Economic Analysis. The methodology for adjusting median income for families of different sizes is specified in 45 CFR 1396.60.

The median income for a family of four, by State for fiscal year 1982 with calculation at the 80, 90, and 115 percent levels, is set forth below for use by States in establishing income ceilings and fee schedules under title XX of the Social Security Act:

Median Income for Families of Four for Fiscal Year 1982

State	Median income ¹	80 percent of median income	90 percent of median income	115 percent of median income
Alabama.....	\$18,613	\$14,890	\$16,752	\$21,405
Alaska.....	31,037	24,830	27,933	35,693
Arizona.....	23,000	18,400	20,700	26,450
Arkansas.....	18,493	14,794	16,644	21,267
California.....	25,109	20,087	22,598	28,875
Colorado.....	25,228	20,182	22,705	29,012
Connecticut.....	24,410	19,528	21,969	28,072
Delaware.....	21,184	16,947	19,066	24,362
District of Columbia.....	21,310	17,048	19,179	24,507
Florida.....	20,757	16,606	18,681	23,871
Georgia.....	21,578	17,262	19,420	24,815
Hawaii.....	24,582	19,666	22,124	28,269
Idaho.....	20,429	16,343	18,386	23,493
Illinois.....	24,265	19,412	21,839	27,905
Indiana.....	22,614	18,091	20,353	26,006
Iowa.....	22,567	18,054	20,310	25,952
Kansas.....	22,848	18,278	20,563	26,275

Median Income for Families of Four for Fiscal Year 1982—Continued

State	Median income ¹	80 percent of median income	90 percent of median income	115 percent of median income
Kentucky.....	19,138	15,310	17,224	22,009
Louisiana.....	20,166	16,133	18,149	23,191
Maine.....	18,074	14,459	16,267	20,785
Maryland.....	24,686	19,749	22,217	28,389
Massachusetts.....	23,786	19,029	21,407	27,354
Michigan.....	24,422	19,538	21,980	28,085
Minnesota.....	24,409	19,527	21,968	28,070
Mississippi.....	17,672	14,138	15,905	20,323
Missouri.....	21,294	17,035	19,165	24,488
Montana.....	20,051	16,041	18,046	23,059
Nebraska.....	20,749	16,599	18,674	23,861
Nevada.....	25,457	20,366	22,911	29,276
New Hampshire.....	22,335	17,868	20,102	25,685
New Jersey.....	24,640	19,712	22,176	28,336
New Mexico.....	21,032	16,826	18,929	24,187
New York.....	21,082	16,866	18,974	24,244
North Carolina.....	19,648	15,718	17,683	22,595
North Dakota.....	19,520	15,616	17,568	22,448
Ohio.....	22,528	18,022	20,275	25,907
Oklahoma.....	20,852	16,682	18,767	23,980
Oregon.....	24,031	19,225	21,628	27,636
Pennsylvania.....	22,314	17,851	20,083	25,661
Rhode Island.....	21,636	17,309	19,472	24,881
South Carolina.....	20,154	16,123	18,139	23,177
South Dakota.....	19,209	15,367	17,288	22,090
Tennessee.....	19,437	15,550	17,493	22,353
Texas.....	23,416	18,733	21,074	26,928
Utah.....	21,250	17,000	19,125	24,438
Vermont.....	19,314	15,451	17,383	22,211
Virginia.....	22,976	18,381	20,678	26,422
Washington.....	24,410	19,528	21,969	28,072
West Virginia.....	18,876	15,101	16,988	21,707
Wisconsin.....	23,518	18,814	21,166	27,046
Wyoming.....	22,673	18,138	20,406	26,074

¹Median Income based on 1979 data.

NOTE.—The median income for a family of four in the 50 States and the District of Columbia, applicable to the period October 1, 1981 through September 30, 1982 is \$22,395.

(Catalog of Federal Domestic Assistance Program No. 13.771 Social Services for Low-Income and Public Assistance Recipients)

Dated: November 18, 1980.

Cesar A. Perales,

Assistant Secretary for Human Development Services.

[FR Doc. 80-36528 Filed 11-21-80; 8:45 am]

BILLING CODE 4110-92-M

White House Conference on Aging; Technical Committee Meeting

The White House Conference on Aging Technical Committee was established to provide scientific and technical advice and recommendations to the National Advisory Committee on the 1981 White House Conference on Aging and to the Executive Director of the 1981 White House Conference on Aging in developing issues to be considered and to produce technical documents to be used by the Conference.

Notice is hereby given pursuant to the Federal Advisory Committee Act, (Pub. L. 92-463, 5 U.S.C. App. 1, sec. 10, 1976) that the Technical Committee on Older Americans as a Growing National Resource will hold their final meeting on Wednesday, December 17, 1980 from 9:30 a.m. until 3:30 p.m. in Room 5542 at

330 Independence Avenue SW.,
Washington, D.C. 20201.

The purpose of the meeting will be to discuss the draft report.

Further information on the Technical Committee meeting may be obtained from Mr. Jerome R. Waldie, Executive Director, White House Conference on Aging, Room 4059, 330 Independence Avenue SW., Washington, D.C. 20201, telephone (202) 245-1914. Technical Committee meetings are open for public observation.

Dated: November 18, 1980.

Mamie Welborne,

HDS Committee Management Officer.

[FR Doc. 80-36527 Filed 11-21-80; 8:45 am]

BILLING CODE 4110-92-M

White House Conference on Aging, Technical Committee Meeting

The White House Conference on Aging Technical Committee was established to provide scientific and technical advice and recommendations to the National Advisory Committee of the 1981 White House Conference on Aging and to the Executive Director of the 1981 White House Conference on Aging in developing issues to be considered and to produce technical documents to be used by the Conference.

Notice is hereby given pursuant to the Federal Advisory Committee Act, (Pub. L. 92-463, 5 U.S.C. App. 1, sec. 10, 1976) that the Technical Committee on Retirement Income will hold their next meeting on Wednesday, December 10, 1980 from 9:00 a.m. until 5:00 p.m. and Thursday, December 11, 1980 from 9:00 a.m. until 3:00 p.m. in Room 5542 at 330 Independence Avenue, S.W., Washington, D.C. 20201.

The purpose of the meeting will be to discuss the remaining sections of the Committee's outline and review the first part of the Committee report.

Further information on the Technical Committee meeting may be obtained from Mr. Jerome R. Waldie, Executive Director, White House Conference on Aging, Room 4059, 330 Independence Avenue, S.W., Washington, D.C. 20201, telephone (202) 245-1914. Technical Committee meetings are open for public observation.

Dated: November 18, 1980.

Mamie Welborne,

HDS Committee Management Officer.

[FR Doc. 80-36528 Filed 11-21-80; 8:45 am]

BILLING CODE 4110-92-M

Public Health Service Health Resources Administration

Health Education Assistance Loan Program; "Variable Interest Rate for Quarter Ending December 31, 1980"

The Secretary announces that for the three-month period ending December 31, 1980 the variable interest rate on loans in the Health Education Assistance Loan (HEAL) Program shall be at the annual rate of 11 1/2 percent.

Using the regulatory formula (45 CFR 126.13 (a) (2) and (3)), the Secretary would normally compute the variable rate for this three-month period by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.5 from the average bond equivalent rate of 91-day Treasury bills for the preceding calendar quarter (9.78 percent), and rounding the result (6.28 percent) upward to the nearest one-eighth of one percent (6.375). Thus, the variable rate for this three-month period would normally be 1.59373 percent.

However, the regulatory formula also provides that the annual rate of the variable interest rate for a three-month period shall be reduced to the highest one-eighth of one percent which would result in an average rate not in excess of 12 percent for the twelve-month period concluded by those three months. For the three previous quarters the variable interest at the annual rate has been as follows: 12 1/2 percent for the quarter ending March 31, 1980; 13 1/4 percent for the quarter ending June 30, 1980 and 11 percent for the quarter ending September 30, 1980. Therefore, in order to maintain an average rate of 12 percent for the twelve month period ending December 31, 1980, the variable interest rate for the quarter ending December 31, 1980, will be at an annual rate of 11 1/2 percent.

Dated: November 18, 1980.

Karen Davis,

Administrator.

(Catalog of Federal Domestic Assistance No. 13.574, Health Professions Educational Assistance Act Insured Loans)

[FR Doc. 80-36586 Filed 11-21-80; 8:45 am]

BILLING CODE 4110-83-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection

[Docket No. N-80-1035]

National Mobile Home Advisory Council; Cancellation of Biannual Meeting

AGENCY: Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection, HUD.

ACTION: Notice of cancellation of biannual meeting.

SUMMARY: This notice announces cancellation of the biannual meeting of the Mobile Home Advisory Council scheduled for December 9, 10, 11 and 12, 1980 in Austin, Texas.

FOR FURTHER INFORMATION CONTACT:

Jesse McElroy, Director, Office of Mobile Home Standards, Office of Neighborhoods, Voluntary Associations and Consumer Protection, Department of Housing and Urban Development, Room 3244, 451 7th Street, S.W., Washington, D.C. 20410. Telephone (202) 755-6920—this is not a toll free number.

SUPPLEMENTARY INFORMATION: On October 17, 1980 (FR Vol. 45 No. 203, p. 69046, Docket No. N-80-1035), this office published notice of a beannual meeting of the National Mobile Home Advisory Council. That meeting was to be held December 9, 10, 11 and 12, 1980 at the Sheraton Crest Inn, 111 East First Street, Austin, Texas 78701. Notice is hereby given that this meeting is cancelled. It will be rescheduled after January 1, 1981 pursuant to a notice subsequently published in the *Federal Register*. That notice will indicate the time, place and tentative discussion subjects of the rescheduled meeting.

(Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); National Mobile Home Construction and Safety Standards Act of 1974 (42 U.S.C. 5404); and Federal Advisory Committee Act (5 U.S.C. App. I, 10(a)(2))).

Issued at Washington, D.C., November 18, 1980.

William O. Anderson,

Acting General Deputy Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection.

[FR Doc. 80-36508 Filed 11-21-80; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****[INT DEIS 80-72]****Proposed Grazing Management Program for the Benton/Owens Valley Planning Unit, Bishop Resource Area, Bakersfield District, California; Availability of Draft Environmental Impact Statement**

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) has prepared a draft environmental impact statement concerning a proposed intensive grazing management program for the Benton/Owens Valley near Bishop, California. Four management alternatives are presented and analyzed for 49 grazing allotments 8 of which are proposed for intensive management under allotment management plans (AMPs). The program affects 542,000 acres of BLM land and 120,000 acres of private and other agency land.

Comments on the draft environmental impact statement are being solicited from public agencies and interested individuals and entities. The Bureau of Land Management invites written comments on the statement to be submitted by January 26, 1981 to the District Manager, Bakersfield District, Bureau of Land Management, 800 Truxtun Ave., Room 302, Bakersfield, California 93301. The comments will be incorporated in the final environmental impact statement.

A limited number of copies of the draft environmental impact statement are available upon request at the following offices:

California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, Telephone (916) 484-4541.

Bakersfield District Office, Bureau of Land Management, 800 Truxtun Ave., Bakersfield, California 93301.

Bishop Area Office, Bureau of Land Management, 873 North Main St., Bishop, California 93514, Telephone (714) 872-4881.

Copies of the draft environmental impact statement will be available for public reading and review at the following locations:

Division of Rangeland Management, Bureau of Land Management, Interior Building, 18th and C Streets, NW., Washington, D.C. 20240.

California State Office (911), Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, Telephone (916) 484-4541.

Bakersfield District Office, Bureau of Land Management, 800 Truxtun Ave., Bakersfield, California 93301, Telephone (805) 984-1191.

Bishop Area Office, Bureau of Land Management, 873 North Main St., Bishop, California 93514, Telephone (714) 872-4881.

Dated: November 14, 1980.

Ron Hofman,

Associate State Director.

[FR Doc. 80-36552 Filed 11-21-80; 8:45 am]

BILLING CODE 4310-84-M

Water and Power Resources Service**Contract Negotiations With the Casper-Alcova Irrigation District and the City of Casper; Intent To Negotiate a Water Service Contract**

In accordance with procedures established by the Department of the Interior concerning public participation in water service and repayment contract negotiations, the Water and Power Resources Service intends to initiate negotiations with the Casper-Alcova Irrigation District and the city of Casper, Wyoming, for municipal water service to the city of Casper from the Kendrick Project, Wyoming, and establishment of a water service charge for water service to subdivided lands within the district.

The proposed municipal water service contract will provide the city of Casper with up to 7,000 acre-feet of water per year. The water is needed by the city of Casper as an additional supply of municipal water to supplement its existing water supply to meet its growing water demands due to increases in population.

The establishment of a water service charge for subdivided lands within the district will be for those lands of less than 10 acres receiving district water which are no longer considered as agricultural tracts in accordance with local county definition.

The Kendrick Project, located in central Wyoming, was authorized by a finding of feasibility approved by the President on August 30, 1935, as an addition under the Reclamation Project Act of 1939 (53 Stat. 1187). Major project features include Seminole Dam, Reservoir, and Powerplant; Alcova Dam, Reservoir, and Powerplant; the Casper canal, laterals, and drainage works; and a power transmission system.

The Casper-Alcova Irrigation District is located along the northwesterly side of the North Platte River between the cities of Alcova and Casper in central Wyoming. The city of Casper is located

in central Wyoming and is adjacent to the general service area of the district. The city's population is approximately 58,400 and is expected to increase to over 112,000 by the year 2000.

The 7,000 acre-feet of Kendrick Project water the district proposes to make available to the city will not reduce the district's irrigation water supply or place additional demands upon the Kendrick Project. The water supply will be developed through proposed water conservation measures by the district. The district proposes to initiate a system improvement program which should yield more than the 7,000 acre-feet of water needed by the city annually.

All meetings scheduled by the Water and Power Resources Service with the Casper-Alcova Irrigation District and the Casper Board of Public Works for the purpose of discussing terms and conditions of the proposed water service contract will be open to the general public as observers. Advance notice of meetings shall be furnished only to those parties having previously furnished a written request for such notice at least 1 week prior to any meeting. Requests should be addressed to the Regional Director, Water and Power Resources Service, Attention Code 440, P.O. Box 25247, Denver, Colorado 80225.

All written correspondence concerning the proposed contract shall be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

The public is invited to submit written comments on the form of the proposed contract not later than 30 days after the completed contract draft is declared to be available to the public. In the event there is little or no public interest evidenced in these contract negotiations pursuant to this notice, the availability of the negotiated draft contract for public review and comment will not be formally publicized in the **Federal Register** or other media. The Commissioner of Water and Power will review comments submitted and based on the number, source, and nature of the comments, he will decide whether to hold a public hearing.

For further information on scheduled contract negotiating sessions and copies of the proposed contract form, please contact Mr. Robin D. McKinley or Mr. Buddy J. Smith, Repayment Branch, at the above address, or telephone (303) 234-3327 or 234-6562.

Dated: November 17, 1980.

Aldon D. Nielsen,

Acting Assistant Commissioner of Water and Power Resources.

[FR Doc. 80-36489 Filed 11-21-80; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided November 18, 1980.

In our recent decisions, a 13-percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level.

The weekly figures set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 13.4-percent. We are authorizing that the 13-percent surcharge for this traffic remain in effect, and that all owner-operators are to receive compensation at this level.

No change is authorized in the 2.3-percent surcharge on less-than-truckload (LTL) traffic performed by carriers not utilizing owner operators, the 1.3-percent surcharge for United Parcel Service, nor in the 5.0-percent surcharge authorized for the bus carriers.

Notice shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commission or Boards of each State having jurisdiction over transportation, by depositing a copy in the Office of the Secretary, Interstate Commerce Commission Washington, D.C., for public inspection and by delivering a copy to the Director, Office of the Federal Register for publication therein.

IT IS ORDERED:

This decision shall become effective Friday 12:01 a.m. November 21, 1980.

By the Commission. Chairman Gaskins, Vice Chairman Gresham, Commissioners Clap, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,
Secretary.

Appendix.—Fuel Surcharge

Base date and price per gallon (including tax)

January 1, 1979..... 63.5¢

Date of current price measurement and price per gallon (including tax)

November 17, 1980..... 113.8¢

	Transportation performed by—			
	Owner operator	Other	Bus carrier	UPS
	(1)	(2)	(3)	(4)
Average percent: fuel expenses (including taxes) of total revenue.....	16.9	2.9	6.3	3.3
Percent surcharge developed.....	13.4	2.3	5.0	*2.1
Percent surcharge allowed.....	13.0	2.3	5.0	*1.3

* The percentage surcharge developed for UPS is calculated by applying 81 percent of the percentage increase in the current price per gallon over the base price per gallon to UPS average percent of fuel expense to revenue figure as of January 1, 1979 (3.3 percent).

* The developed surcharge is reduced 0.8 percent to reflect fuel-related increases already included in UPS rates.

[FR Doc. 80-36605 Filed 11-21-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). An interim proposed final Rule 240 reflecting changes to comport with the Motor Carrier Act of 1980 was published in the July 3, 1980, *Federal Register* at 45 FR 45529 under Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*. These rules provide, among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the *Federal Register*. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(C) of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.240(B). A copy of any application together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of \$10.00, in accordance with 49 CFR 1100.240(A)(h).

Amendments to the request for

authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed on or before January 8, 1980 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Decided: November 14, 1980.

By the Commission. Review Board Number 5, Members Krock, Taylor and Williams.

MC-F-14492F, filed October 20, 1980, WILSON TRUCKING CORPORATION (Wilson) (P.O. Drawer 2, Fishersville, VA 22939)—purchase (portion)—TARHEEL EXPRESS, INC. (Tarheel) (18th Street Place, Hickory, NC 208601). Representative: Francis W. McNerny, Suite 502, Solar Building, 1000 16th Street NW., Washington, DC 20036. Wilson seeks to purchase a portion of the operating rights of Tarheel. Charles W. Wilson, who controls 44.9% of the capital stock, and is president of Wilson, seeks to acquire control through this transaction. The interstate operating

rights to be acquired by Wilson are contained in Tarheel's certificate of registration, MC 99334 (Sub-No. 2), which authorizes the transportation of *general commodities* (except those requiring special equipment), between points in Cabarrus, Alamance, Cherokee, Cumberland, Davie, Davidson, Forsyth, Gaston, Durham, Cleveland, Halifax, Iredell, Jackson, Johnston, Lee, Mecklenburg, Montgomery, McDowell, Randolph, Rockingham, Richmond, Rowan, Surry, Stanly, Anson, Caldwell, Edgecombe, Catawba, Guilford, Haywood, Henderson, New Hanover, Union, Vance, Wake and Wilkes Counties, NC. Wilson holds authority as a motor common carrier pursuant to Certificate MC 64600 and sub-numbers thereunder. (Hearing site: Washington, DC, or Greensboro, NC)

Notes.—(1) A directly related conversion application has been filed in MC 64600 (Sub-No. 60F), published in this same *Federal Register* issue. (2) An application for temporary authority has been filed. (3) Applicants acknowledge that the authority being retained by Tarheel duplicates to an extent that authority being sold to Wilson. They have requested cancellation of the portion determined to be duplicative. We will therefor exclude new furniture and furniture parts from the general commodity authority being purchased.

MC 64600 (Sub. 60F), filed October 20, 1980. Applicant: WILSON TRUCKING CORPORATION—conversion—P.O. Drawer 2, Fishersville, VA 22939. Representative: Francis W. McNerny, Suite 502, Solar Building, 1000 16th Street NW., Washington, DC 20036. Conversion of Certificate of Registration No. MC-99334 (Sub-No. 2) into a Certificate of Public Convenience and Necessity authorizing the transportation as a *common carrier*, by motor vehicle, over irregular routes, of *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, new furniture and furniture parts and those requiring special equipment), between points in Cabarrus, Alamance, Cherokee, Cumberland, Davie, Davidson, Forsyth, Gaston, Durham, Cleveland, Halifax, Iredell, Jackson, Johnston, Lee, Mecklenburg, Montgomery, McDowell, Randolph, Rockingham, Richmond, Rowan, Surry, Stanly, Anson, Caldwell, Edgecombe, Catawba, Guilford, Haywood, Henderson, New Hanover, Union, Vance, Wake and Wilkes Counties, NC. (Hearing site: Washington, DC, or Greensboro, NC)

Note.—This proceeding is a matter directly related to a proceeding pursuant to 49 U.S.C. 11343 in MC-F-14492F, published in this same

Federal Register issue. New furniture and furniture parts was excluded from the grant of general commodities as requested by applicant to eliminate the possibility of duplicating authority.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-36609 Filed 11-21-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Finance Applications; Decision-Notice

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). These rules provide, among other things, that opposition to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the *Federal Register*. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. Opposition under these rules should comply with Rule 240(c) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, and specify with particularity the facts, matters and things relied upon, but shall not include issues or allegations phrased generally. Opposition not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of any protest shall be filed with the Commission, and a copy shall also be served upon applicant's representative or applicant if no representative is named. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(c)(4) of the special rules and shall include the certification required.

Section 240(e) further provides, in part, that an applicant who does not intend timely to prosecute its application shall promptly request its dismissal.

Further processing steps will be by Commission notice or order which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication except for good cause shown.*

Any authority granted may reflect administratively acceptable restrictive amendments to the transaction proposed. Some of the applications may have been modified to conform with Commission policy.

We find with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the national transportation policy subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930.

In the absence of legally sufficient protests as to the finance application or any application directly related thereto filed within 30 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Decided: November 12, 1980.

By the Commission, Review Board Number 5, Members Krock, Taylor, and Williams.

MC-F-14402F, filed May 30, 1980. LILE INTERNATIONAL COMPANIES (Lile)

(15605 S.W. 72nd Avenue, Tigard, OR 97223)—control—MADDOX TRANSFER AND STORAGE, INC. (Maddox) (1231 N.W. Hoyt, Portland, OR 97209). Representative: Robert R. Hollis, 400 Pacific Bldg., Portland, OR 97204. Lile seeks authority to acquire control of Maddox through the purchase by Lile of all the issued and outstanding stock of Maddox. Wendell B. Lile who controls Lile through stock ownership, seeks to acquire control of Maddox through the transaction. The interstate operating rights to be controlled are contained in certificate MC 94427, which authorizes the transaction as a motor common carrier over irregular routes, transporting (1) *general commodities*, usual exceptions, between points in Portland, OR, (2) *household goods* as defined by the Commission, and *used pianos*, between Portland, OR, and Vancouver, WA, and (3) *household goods* as defined by the Commission, and *new and used pianos*, between Portland, OR, on the one hand, and, on the other, points in Clark, Skamania, Cowlitz, and Wahkiakum Counties, WA. Lile holds motor common carrier authority pursuant to MC 129420 and sub-numbers thereunder. (Hearing site: Portland, OR)

Note.—Application for temporary authority has been filed.

MC-F-14404F, filed May 28, 1980. LILE INTERNATIONAL COMPANIES (Lile) (15605 S.W. 72nd Avenue, Tigard, OR 97223)—control—BOWER TRANSPORTATION SERVICES, INC. (Bower) (136 N.E. 16th, Portland, OR 97332). Representative: Robert R. Hollis, 400 Pacific Bldg., Portland, OR 97204. Lile seeks authority to acquire control of Bower through the purchase by Lile of all the issued and outstanding stock of Bower. Wendell B. Lile who controls Lile through stock ownership, seeks to acquire control of Bower through the transaction. The interstate operating rights to be controlled are contained in Certificate MC 1083, which authorizes the transportation, as a motor common carrier over irregular routes of (1) *edible nuts*, from points in Clark County, WA, to points in Marion and Polk Counties, OR, and those in Yamhill County, OR (except Dundee and Newberg), (2) *fresh fruits*, from points in Marion and Polk and Yamhill (except Dundee and Newberg) Counties, OR, to points in Clark County, WA, (3) *general commodities*, usual exceptions, between Portland, OR, on the one hand, and, on the other, Clark County, WA, and (4) *fruits and nuts*, between points in Clark County, WA, on the one hand, and, on the other, Dundee and Newberg, OR. Lile holds motor common carrier

authority pursuant to MC 129420 and sub-numbers thereunder. (Hearing site: Portland, OR)

Note.—An application for temporary authority has been filed.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-36604 Filed 11-21-80; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-160 (Sub-3F)]

**Montour Railroad Co.—
Abandonment—Near Library Junction
in Allegheny and Washington
Counties, Pa.; Findings**

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a Certificate and Decision decided November 6, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, the present and future public convenience permit the abandonment by the Montour Railroad Company of a portion of its main line of railroad extending from railroad milepost 32.5 to the end of the line at railroad milepost 39.9, a distance of 7.4 miles, and its entire Library Branch from Library Junction at railroad milepost 0.0 to the end of the line at railroad milepost 5.7, a distance of 5.7 miles, in Allegheny and Washington Counties, PA subject to the conditions for the protection of railway employees prescribed by the commission in *Oregon Short Line R. Co.—Abandonment Goshen*, 360 I.C.C. 91 (1979), and further that applicant shall keep intact all of the right-of-way underlying the track, including all the bridges and culverts for a period of 180 days from November 6, 1980, to permit any state or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way. A certificate of public convenience and necessity permitting abandonment was issued to the Montour Railroad Company. Since no investigation was instituted, the requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the **Federal Register** be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than December 4, 1980. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 30 days from the service date of the certificate.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-36608 Filed 11-21-80; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-37 (Sub-10F)]

**Oregon-Washington Railroad &
Navigation Co.—Abandonment—and
Discontinuance of Service by Union
Pacific Railroad Co. Near Starbuck, in
Columbia County, WA; Findings**

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a Certificate and Decision decided October 9, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, the present and future public convenience and necessity permit the abandonment by the Oregon-Washington Railroad and Navigation Company and discontinuance of service by Union Pacific Railroad Company over a portion of a line of railroad known as the Tucannon Branch extending from railroad milepost 4.71 (old milepost 3.75) near Starbuck to milepost 5.10 (old milepost 4.14) near Starbuck, a distance of 0.39 mile in Columbia County, WA, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment Goshen*, 360 I.C.C. 91 (1979), and further that applicants shall keep intact all of the right-of-way underlying the track, including all the bridges and culverts for a period of 120 days from October 9, 1980, to permit any state or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way. A certificate of public convenience and necessity permitting abandonment was issued to the Oregon-Washington Railroad & Navigation Company and discontinuance of service to Union Pacific Railroad Company. Since no investigation was instituted, the requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decision in the **Federal**

Register be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission Building, Washington, D.C. 20423 no later than December 4, 1980. The offer, as filed, shall contain information required pursuant to Section § 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective December 24, 1980.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-36607 Filed 11-21-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Proposed Consent Decree in Action to Enjoin Discharge of Air Pollutants by United States Steel Corp. (Geneva Works)

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on or about November 4, 1980, a proposed consent decree in *United States v. United States Steel Corporation*, was lodged with the United States District Court for the District of Utah. The proposed consent decree requires the Corporation to bring its Geneva Works into compliance with requirements of the Clean Air Act.

The proposed consent decree may be examined at the office of the United States Attorney, 200 Post Office and Courthouse Building, 350 South Main Street, Salt Lake City, Utah 84101, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 2633, Ninth and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, at a cost of \$17.00 per copy to cover reproduction expense. A check or money order for \$17.00 and made payable to the

Treasurer of the United States must accompany any request for a copy of the proposed decree.

The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to the Deputy Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. United States Steel Corporation* (D. Utah), D.J. Ref. 90-5-2-1-326.

Angus MacBeth,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 80-36571 Filed 11-21-80; 8:45 am]

BILLING CODE 4410-01-M

National Institute of Justice

Solicitation for Competitive Research Cooperative Agreement Program to Evaluate a Field Test of the Differential Police Response to Calls for Service Program

The National Institute of Justice announces a competitive research cooperative agreement program to evaluate a field test of the *Differential Police Response to Calls for Service* program. The purpose of this evaluation award is to assess the operations and effectiveness of this program. Key research questions in this evaluation are:

1. To assess the impact of the differential response system on police practices;
2. To assess the impact of the differential response system on citizens;
3. And to assess the transferability of the program to other police departments.

The solicitation asks for the submission of draft proposals. A formal application will be requested following a peer review process in accordance with the criteria set forth in the solicitation. In order to be considered, all papers must be received no later than January 21, 1981. To maximize competition for the award, both profit-making and nonprofit organizations are eligible to apply; however, a fee will not be paid.

At this time the NIJ appropriation for fiscal year 1981 has not been finalized. If the proposed request is adopted, the Institute will allocate approximately \$350,000 for an initial 18 month period. If a figure less than the amount requested is appropriated, this funding level may be modified. In either case, the total amount of the award will depend upon receipt of a high quality proposal that

meets the selection criteria. In addition to the initial procurement a follow-on non-competitive supplementary award for 10 months and \$150,000 is currently planned.

Further information and copies of the solicitation can be obtained by contacting Phil Travers, Joyce Cason or Diann Stone, at the Office of Program Evaluation, NIJ, 633 Indiana Avenue, NW., Washington, D.C. 20531, or phone (301) 492-9085.

Harry M. Bratt,

Acting Director, National Institute of Justice

[FR Doc. 80-36570 Filed 11-21-80; 8:45 am]

BILLING CODE 4410-18-M

LEGAL SERVICES CORPORATION

Grants and Contracts

November 18, 1980.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355a, 88 Stat. 378, 42 U.S.C. 2996-2996f, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract, or project * * *."

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by:

Gulfoast Legal Services in St. Petersburg, Florida, to serve Manatee and Sarasota Counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, Atlanta Regional Office, 615 Peachtree Street NE., 9th Floor, Atlanta, Ga. 30308.

Clinton Lyons,

Director, Office of Field Services.

[FR Doc. 80-36468 Filed 11-21-80; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (80-80)]

NASA Advisory Council (NAC) Space and Terrestrial Applications Advisory Committee (STAAC); Meeting

The *Ad Hoc* Informal Advisory Subcommittee on Satellite Communications Applications of the NAC-STAAC will meet on December

11, 1980 from 9:00 a.m. to 4:30 p.m., at NASA Headquarters, Room 226A, Federal Building 10B, 600 Independence Avenue SW, Washington, DC 20546. The meeting is open to the public. Members of the public will be admitted to the meeting on a first-come, first-served basis and will be required to sign a visitor's register. The seating capacity of the room is for 35 persons.

This Subcommittee, comprised of twelve members including the Subcommittee Chairperson, Dr. John V. Harrington, will review the NASA Satellite Communications Program and related issues.

The approved agenda for the meeting is as follows:

Time and Topic

9:00 a.m. Introductory Remarks
9:15 a.m. Program Overview
10:00 a.m. Review of 30/20 GHz Program
—Status of Technology Development
—Plans for New Start
3:00 p.m. Potential Joint Mobile Satellite Program with Canada
4:00 p.m. General Discussion
5:00 p.m. Adjourn

For further information regarding the meeting, please contact Dr. S. H. Durrani, National Aeronautics and Space Administration, Code EC-4, Washington, DC 20546, (202) 755-3591.

Frank J. Simokaitis,
Acting Associate Administrator for External Relations.

November 18, 1980.

[FR Doc. 80-36489 Filed 11-21-80; 8:45 am]

BILLING CODE 7510-01-M

[Notice (80-81)]

NASA Advisory Council (NAC) Space and Terrestrial Applications Advisory Committee (STAAC); Meeting

The scheduled meeting on October 23 and 24, 1980, of the Ad Hoc Informal Advisory Subcommittee on Weather, Climate and Oceans, published in the *Federal Register* on October 7, 1980, (45 FR 66534), was subsequently cancelled. The meeting cancellation notice was published in the *Federal Register* on October 21, 1980 (45 FR 69602). This meeting is now rescheduled to be held on December 18 and 19, 1980. The committee will meet on December 18, 1980, from 9:00 a.m. to 5:00 p.m. and from 8:30 a.m. to 11:45 a.m. on December 19, 1980. The location of this meeting is the NASA Goddard Space Flight Center, Greenbelt, Maryland 20770, Building 26, Room 205.

The meeting is open to the public. Members of the public will be admitted to the meeting on a first-come, first-served basis and will be required to sign

a visitor's register. The seating capacity of the meeting room is for 50 persons.

The Subcommittee, comprised of 21 members of the NAC-STAAC including the Chairperson, Dr. Richard Goody, will review the Global Weather Program and related issues in the Environmental Observations Program.

The approved agenda for the meeting is as follows:

Time and Topic

DECEMBER 18, 1980

9:00 a.m. Chairperson's Remarks
9:15 a.m. Committee Business
9:30 a.m. Review of Global Weather Program
5:00 a.m. Adjourn

DECEMBER 19, 1980

8:30 a.m. National Oceanic Satellite Service (NOSS) Research and Air Sea Interactions and Related Areas
9:30 a.m. Topographical Experiment (TOPEX)/Gravitational Satellite (GRAVSAT) Buoys and Related Areas
10:15 a.m. Program Status and Overview Report
10:45 a.m. Conclusions and Recommendations
11:45 a.m. Adjourn

For further information regarding the meeting, please contact John Theon, NASA Headquarters, Washington, DC 20546, (202) 755-8596.

Gerald D. Griffin,

Acting Associate Administrator for External Relations.

November 18, 1980.

[FR Doc. 80-36498 Filed 11-21-80; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Artists-in-Schools Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Artists-in-Schools panel to the National Council on the Arts will be held on December 10-12, 1980, from 9:00 a.m. to 5:30 p.m. in room 1422, Columbia Plaza Office Complex, 2401 E St., NW., Washington, D.C.

This meeting will be open to the public on a space available basis. The topic for discussion will be policy and general application review.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National

Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

November 17, 1980.

[FR Doc. 80-36572 Filed 11-21-80; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Visual Arts Panel (Workshops, Residencies, Crafts Apprenticeships); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Panel (Workshops, Residencies, Crafts Apprenticeships) to the National Council on the Arts will be held December 9-11, 1980, from 9:00 a.m.-5:30 p.m., in room 1125, December 9 and 11; in room 1422, December 10, Columbia Plaza Office Complex 2401 E St., NW., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the *Federal Register* of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5 United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operation, National Endowment for the Arts.

November 14, 1980.

[FR Doc. 80-36491 Filed 11-21-80; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-461A and 50-462A]

Illinois Power Company, et al.; receipt of Antitrust Information

Illinois Power Company, on behalf of itself and Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc., has filed antitrust

information for their application for operating licenses for the Clinton Power Station, Units 1 and 2. This information was filed pursuant to Part 2.101 of the Commission Rules and Regulations and is in connection with the owners' plans to operate two boiling water reactors in Dewitt County, Illinois. The application contains antitrust information for review pursuant to NRC Regulatory Guide 9.3 to determine whether there have been any significant changes since the completion of the antitrust review at the construction permit stage. The remainder of the application for operating licenses was submitted previously and was docketed on September 9, 1980. (See *Federal Register* Notice 45 FR 64307.)

On completion of staff antitrust review of the above-named application, the Director of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under section 105c(2) of the Act. A copy of this finding will be published in the *Federal Register* and will be sent to the Washington and local public document rooms and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, request for reevaluation may be submitted for a period of 60 days after the date of the *Federal Register* notice. The results of any reevaluations that are requested will also be published in the *Federal Register* and copies sent to the Washington and local public document rooms.

A copy of the application for operating licenses and the antitrust information submitted are available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. 20555 and in the local public document room at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois.

Any person who desires additional information regarding the matter covered by this notice or who wishes to have his views considered with respect to significant changes related to antitrust matters which have occurred in the applicants' activities since the construction permit antitrust reviews for the above-named plant should submit such requests for information or views to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Attention: Chief, Utility Finance Branch, Office of Nuclear Reactor Regulation, on or before, January 26, 1981.

Dated at Bethesda, Maryland, this 13th day of November, 1980.

For the Nuclear Regulatory Commission.
Frank J. Miraglia,
Acting Chief, Licensing Branch No. 3, Division
of Licensing.

[FR Doc. 80-36367 Filed 11-21-80; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

Background

November 19, 1980.

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 USC, Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, extensions (burden change), extensions (no change), or reinstatements. The agency clearance officer can tell you the nature of any particular revision you are interested in. Each entry contains the following information:

- The name and telephone number of the agency clearance officer (from whom a copy of the form and supporting documents is available);
- The office of the agency issuing this form;
- The title of the form;
- The agency form number, if applicable;
- How often the form must be filled out;
- Who will be required or asked to report;
- The Standard Industrial Classification (SIC) codes, referring to specific respondent groups that are affected;
- Whether small businesses or organizations are affected;
- A description of the Federal budget functional category that covers the information collection;
- An estimate of the number of response;
- An estimate of the total number of hours needed to fill out the form;
- An estimate of the cost to the Federal Government;

The number of forms in the request for approval;

The name and telephone number of the person or office responsible for OMB review; and

An abstract describing the need for and uses of the information collection

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. Our usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the *Federal Register*, but occasionally the public interest requires more rapid action.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review. If you experience difficulty in obtaining the information you need in reasonable time, please advise the OMB reviewer to whom the report is assigned. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Jim J. Tozzi, Assistant Director for Regulatory and Information Policy, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF AGRICULTURE

Agency Clearance Officer—Richard J. Schrimper—202-447-6201.

Extensions (No Change)

- Food and Nutrition Service
- Food Stamp Mail Issuance Report
- FNS-259
- Quarterly
- State or Local Governments
- State Agencies and Project Areas
- SIC: 943

- Public Assistance and Other Income Supplements, 10,800 responses, 8,100 hours; \$1,000 Federal costs, 1 form
Charles A. Ellett, 202-395-7340

In order to conform with the food stamp regulations, this form is required. The form provides management information on the number and dollar amounts of mail issuance, the replacement of mail losses, and the action(s) taken to reduce the occurrence of such losses.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Clearance Officer—Joseph Strnad—202-245-7488.

New

- National Institutes of Health Occupational Cancer Questionnaire Other—see SF83
Individuals or Households
High School Students and Teachers
Health, 2,456 responses, 1,960 hours;
\$242,793 Federal cost, 2 forms
Richard Eisinger, 202-395-6880

A lack of basic knowledge exist regarding carcinogenesis risks in workplace. Educational strategies suggest a more universal knowledge regarding cancer should be diffused before potential workers enter the workplace. This project will develop, implement and evaluate a program of occupational cancer education in high schools to serve as a model to be replicated in other educational systems.

- Human Development Services
AFDC WIN Change Notice
IM-6
On Occasion
State or Local Governments
Income Maintenance Units of Local
Public Welfare Offices
SIC: 832
Training and Employment, 400,000 responses, 20,000 hours; \$210 Federal cost, 1 form
Barbara F. Young, 202-395-6880

The IM-6 is an operational form designed to facilitate communication concerning a change in an applicant/recipient's welfare status between two separate agencies, the income maintenance unit (IMU) and the employment and training (E&T) sponsor. The form facilitates such notification of changes, e.g., change in employment status, change from voluntary to mandatory status, or rejection of AFDC application.

- Food and Drug Administration
Administrative Detention
Recordkeeping
On Occasion
Businesses or Other Institutions

Device Establishments SIC: 384

- Consumer and Occupational health and Safety, 1 response, 0 hours; \$25 Federal cost, 1 form
Richard Eisinger, 202-395-6880

These requirements are necessary to document compliance and conditions of mfg. and to compare information concerning detained devices to information about other shipments of the devices. These requirements are also necessary to permit FDA to trace articles for which the detention period expired before a seizure is accomplished or injunctive relief is obtained.

Revisions

- Food and Drug Administration
Radioactive Drug Research Committee
Report on Research Use
If Radioactive Drug: Membership
Summary and Study Summary
2914 2915
On Occasion
Businesses of Other Institutions
Radioactive Drug Research Committees
Consumer and Occupational Health and Safety, 3,000 responses, 750 hours;
\$1,500 Federal Cost, 2 forms
Richard Eisinger, 202-395-6880

Under 21 CFR 361.1, radioactive research committees are required to provide a report of their current membership and a summary of the studies approved by the committee both on an annual basis and whenever specified limits to studies are exceeded. The report are used to monitor the continued committee compliance with regulations.

Extensions (Burden Change)

- Social Security Administration
Worksheet for Integrated Quality
Control Reviews
SSA-4340
Semiannually
Individuals of Households/State of
Local Governments
Welfare Recipients
SIC: 944

Public Assistance and Other Income Supplements, 24,334 responses, 0 hours; \$750,000 Federal cost, 1 form
Barbara F. Young, 202-395-6880

Section 402(a)(6), and 403(c), and (j) of the Social Security Act provide for information regarding State administered quality control systems for public assistance programs. This form used to measure and reduce the frequency of benefit error, which are benefits disbursed for ineligible recipients. These forms provide the information necessary to comply with Congressional Directive, Sec. 201 of HR 4389.

DEPARTMENT OF THE INTERIOR

Agency Clearance Officer—William L. Carpenter—202-343-6191.

New

- Heritage Conservation and Recreation Service
Grant-in-Aid Project Completion Report
FHR-8-300A & FHR-8-300B
On Occasion
State or Local Governments
State Historic Preservation Officers
SIC: 951
Recreational Resources, 300 responses, 600 hours; \$93,863 Federal cost, 2 forms
Erika Jones, 202-395-7340

The collection system is in place as required by OMB Circular A-102. The performance report shows how Federal grant funds were used to complete specific historic preservation project work on National Register properties. Technical information in reports is shared with States, Federal agencies, and the public through HCRS publications.

Extensions (Burden Change)

- Office of the Solicitor and Office of the Secretary
State Program Reporting Form—Youth
Conservation Corps Work
Accomplishment
YCC 5
Annually
State on Local Governments
Camp Directors of YCC State Grant
Program Camps
SIC: 941 944 951
Other natural resources, 500 responses, 500 hours; \$41,500 Federal cost, 1 form
Erika Jones, 202-395-7340

State grant YCC camp directors report the value of work accomplished in their camps by resource category. Comparison of the value of work accomplished with funds expended results in a benefit/cost ratio for each camp. This information is primarily used for program justification but is also used for evaluation.

DEPARTMENT OF STATE

Agency Clearance Officer—Gail J. Cook—202-632-3538.

Revisions

- Administration of Foreign Affairs
Application for Amendment of Passport
DSP-19
On Occasion
Individuals or Households
Passport Applicants
Conduct of Foreign Affairs, 40,000 responses, 4,666 hours; \$160,000 Federal cost, 1 form
Phillip T. Balazs, 202-395-4814.

DSP-19 is used to amend a passport to show a change of name, to correct the descriptive data, or to include or exclude a spouse or minor children.

DEPARTMENT OF THE TREASURY

Agency Clearance Officer—Ms. Joy Tucker—202-634-2179

New

- Office of the Secretary
- Self-Evaluation—Transition Plan
- Nonrecurring
- State or Local Governments
- State and Local Governments Receiving \$25,000 or More in Revenue
- Central Fiscal Operations, 28,000 responses, 70,000 hours; \$0 Federal cost, 1 form
- Warren Topelius, 202-395-7340.

To aid recipient governments in reviewing their programs, policies and practices to improve compliance with section 504 of the Rehabilitation Act of 1973. Record keeping requirement, with information to be retained for a three-year period.

Extensions (No Change)

- Office of the Secretary
- Survey of Federal General Revenue
- Sharing and Anti-Recession Fiscal Assistance Expenditures (State Governments)
- RS-902
- Annually
- State or Local Governments
- State Governments
- Central Fiscal Operations, 50 responses, 50 hours; \$1,000 Federal cost, 1 form
- Warren Topelius, 202-395-7340.

This form is used to gather data on expenditures from general revenue sharing and anti-recession fiscal assistance program funds received by State governments. Data are used to analyze expenditures for conformance with program requirements.

C. Louis Kincannon,

Deputy Assistant Director for Reports Management.

[FR Doc. 80-36596 Filed 11-21-80; 8:45 am]

BILLING CODE 3110-01-M

President's Commission for a National Agenda for the Eighties; Meeting

November 17, 1980.

AGENCY: Office of Management and Budget.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Full Commission of the President's Commission for a National Agenda for the Eighties, is scheduled for December 5, 1980 from 9 a.m. to 5 p.m. in

Washington, D.C. The meeting will be held at the Federal Home Loan Bank Board Building, 1700 G Street NW., in the Auditorium.

The purpose of the meeting is to discuss elements of the Commission's report.

Available seats will be assigned on a first-come basis.

The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT:

Ms. Loretta Marshall, President's Commission for a National Agenda for the Eighties, Office of Administration, 744 Jackson Place, Northwest, Washington, D.C. 20006, (202) 275-0616.

Brenda Mayberry,

Acting Budget and Management Officer.

[FR Doc. 80-36490 Filed 11-21-80; 8:45am]

BILLING CODE 3110-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airport Traffic Control Tower at Lancaster, Pennsylvania; Adjusted Hours of Operation

Notice is hereby given that the Airport Traffic Control Tower at Lancaster, Pennsylvania, will adjust its hours of operation. Commencing on or about November 3, 1980, the adjusted hours of operation will be 6:30 a.m. to 11:00 p.m. daily in lieu of 6:30 a.m. to 11:30 p.m.

(Sec. 313(a), 72 Stat. 752; U.S.C. 1354)

Issued in New York, N.Y., on November 4, 1980.

Lonnie D. Parrish,

Acting Director, Eastern Region.

[FR Doc. 80-36494 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-13-M

Flight Standards District Office at Fort Worth, Texas; Separation of Functions

Notice is hereby given that on or about December 1, 1980, the aeronautical quality assurance function will be separated from the Flight Standards District Office, Fort Worth, Texas, and reestablished as a separate office. The new office will be listed as the Aeronautical Quality Assurance Field Office. The Flight Standards District Office will continue to provide General Aviation functions. This information will be reflected in the FAA Organization Statement the next time it is reissued.

Issued in Fort Worth, Texas, on November 7, 1980.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc 80-36492 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-80-32]

Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemptions received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I) and of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before December 15, 1980.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. — 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on November 18, 1980.

John H. Cassidy,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought
20864	InterContinental Airways Co. (ILAX)	14 CFR 121.291(a)(1)	To permit ILAX to operate a CD-8-61F aircraft configured with 252 passenger seats without first conducting a full-seating capacity emergency evacuation demonstration.
20592	Commercial Helicopters	14 CFR 43.3(h)	To allow appropriately trained airmen to remove, inspect, and replace magnetic chip detector plugs on turbine powered aircraft.
20861	United States Fidelity and Guaranty Co.	14 CFR 91.32(b)(1)(ii)	To permit the pilots of petitioner's Gates Learjet Model 35A airplane to operate the aircraft up through the aircraft's maximum certificated altitude (FL 450) without either pilot wearing an oxygen mask as long as there are two pilots at the controls and each pilot has a quick-donning oxygen mask.
20800	New Mexico Aerial Surveys, Inc.	14 CFR 91.169(a)(1)	A one time delay of the annual inspection on petitioner's aircraft from August to December 1981.
20899	United Air Lines	14 CFR 121.311(f)	To permit certain of petitioner's required flight attendants to occupy passenger seats instead of flight attendant seats equipped with the specified restraint system.
20892	Air Midwest, Inc.	14 CFR 21.197	To allow for issuance of a special flight permit with a continuing authorization to fly certain aircraft, that may not meet applicable airworthiness requirements, but are capable of safe flight to bases where repairs or maintenance are to be performed.
20868	Texas International Airlines	14 CFR 121.391(a)(3)	To allow petitioner to utilize two flight attendants aboard its DC-9-30 airplanes with 115 passenger seats when 15 passenger seats are blocked from use and when aircraft substitution for mechanical reasons is required at a station where a third flight attendant is not available or cannot be made available without undue delay or flight cancellation.
18104	Flight Safety International (FSI)	14 CFR 61.57(a)(1)	Amendment of Exemption No. 2592B, to delete the specific simulator type designation and allow future types as they become operational and approved. Exemption 1592B permits pilots to complete their biennial flight review in specified motion base visual simulators.
20785	Herbert F. Diamond	14 CFR 61.39(a)(1)	A 1-year extension of the validity period of petitioner's instrument rating written examination.

Dispositions for Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought—disposition
20452	Dresser Industries, Inc.	14 CFR 61.58(c)	To allow accomplishment of the entire 24-month pilot-in-command proficiency check in an FAA-approved simulator. <i>Granted 11/6/80.</i>
20203	Capital Aero, Inc.	14 CFR 135.261(a)(1)	To allow petitioner to use a minimum rest period of less than 10 hours in a 24-hour period. <i>Denied 11/10/80.</i>
20477	Evergreen International Airlines	14 CFR 121.311(f) and 121.547	To allow petitioner, to the extent necessary, to operate its DC-8 aircraft with a nonessential flight attendant occupying a cockpit jump seat during takeoffs and landings. <i>Denied 11/12/80.</i>
20486	United Airlines	14 CFR 21.93	To allow an "acoustical change" on their JT9D-3A powered 747 fleet without prior approval. <i>Denied 11/13/80.</i>

[FR Doc 80-36540 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-13-M

Proposed Olympic Regional Airport, Jefferson County, Wash., Availability of Draft Environment Impact Statement

The Northwest Regional Office of the Federal Aviation Administration (FAA) announces the availability for public review of the Draft Environmental Impact Statement for the proposed Olympic Regional Airport in Jefferson County, Washington. Copies of the report are available for public review and comment at North Olympic Library, Kitsap Regional Library, Jefferson County Library, FAA Office, Seattle, and Washington State Department of Transportation, Aeronautics Office, Seattle. Review comments must be received by Mr. George L. Buley, Chief, Planning and Programming Branch, FAA Building, King County International Airport, Seattle, Washington 98108 or by Mr. William Hamilton, Assistant

Secretary for Aviation, Washington State Department of Transportation, Aeronautics Division, 8600 Perimeter Road South, Seattle, Washington 98108 by January 20, 1980. For information or questions please call Mr. Buley at (206) 767-2633.

Dated: November 14, 1980.

George L. Buley,
Chief, Planning and Programming Branch,
ANW-610.

[FR Doc. 80-36495 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 143—Ground Based Automated Weather Observation Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.

L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 143 on Ground Based Automated Weather Observation Equipment to be held on December 16-17, 1980 in RTCA Conference Room 261, 1717 H Street, N.W., Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of Sixth Meeting Held on June 19-20, 1980; (3) Review Third Draft Report on Minimum Operational Performance Standards for Ground Based Automated Weather Observation Equipment; and (4) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons

wishing to present statements or obtain information should contact the RTCA Secretariat, 1717 H Street, N.W., Washington, D.C. 20006; (202) 296-0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on November 12, 1980.

Karl F. Bierach,
Designated Officer.

[FR Doc. 80-36493 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. IP80-7; Notice 2]

General Motors Corp.; Grant of Petition for Determination of Inconsequential Noncompliance

This Notice grants the petition by General Motors Corporation of Warren, Michigan ("GM" herein), to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.208, Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection*, on the basis that it is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on April 10, 1980 (45 FR 24752) and an opportunity afforded for comment.

Paragraph S4.1.2.3.1(c) of Standard No. 208 requires that each rear designated seating position in a passenger car shall have a Type 1 (lap belt) seat belt assembly that conforms to 49 CFR 571.209, Motor Vehicle Safety Standard No. 209, *Seat Belt Assemblies*. Paragraph S4.1(k) of Standard No. 209 requires each seat belt assembly to "be permanently and legibly marked or labeled with model (number) . . ." GM discovered that the center rear seat belt assemblies in approximately 264,000 1980 Chevrolet Citation, Pontiac Phoenix and Buick Skylark passenger cars had an incorrect model number (1717) instead of the correct one (1015). The company argued that the noncompliance was inconsequential as the seat belt assemblies comply in all other respects. Further, since the GM part number on the labels is correct, GM records enable the vehicles to be identified in the event of any notification and remedy campaign.

No comments were received on the petition.

The NHTSA concurs with GM's arguments. The labelling noncompliance

appears to be of the nature that the inconsequentiality provisions of the Act were intended to excuse. Accordingly, petitioner has met its burden of persuasion and its petition with respect to the noncompliance herein described is deemed inconsequential as it relates to motor vehicle safety and is hereby granted.

(Sec. 102, Pub. L. 98-42, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued: November 14, 1980.

Michael M. Finkelstein,
Associate Administrator for Rulemaking.

[FR Doc. 80-36287 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-59-M

International Automotive Ratings Symposium

AGENCY: National Highway Traffic Safety Administration.

ACTION: Notice of public meeting.

SUMMARY: The National Highway Traffic Safety Administration will hold a symposium in Lancaster, Pennsylvania, on December 9-11, 1980, to provide a forum for the exchange of information and viewpoints on various aspects of automotive ratings. All interested persons are invited to attend and participate in the symposium.

DATE: The International Automotive Ratings Symposium will be held on December 9, 10, and 11, 1980.

ADDRESS: The symposium will be held at Host Farm Inn, Lancaster, Pennsylvania.

FOR FURTHER INFORMATION:

Ms. Ivy Baer, Office of Automotive Ratings, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, D.C. 20590, 202-426-1750.

SUPPLEMENTARY INFORMATION: Title II of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1941, et seq.) authorizes the National Highway Traffic Safety Administration (NHTSA) to study the methods for determining the damage susceptibility, crashworthiness (occupant protection), and ease of diagnosis and repair of passenger motor vehicles, and to devise ways in which information on these subjects can be communicated to consumers to aid in purchasing decisions. In order to gather information and air viewpoints in these areas, NHTSA will conduct an International Automotive Ratings Symposium at the Host Farm Inn, Lancaster, Pennsylvania, on December 9-11, 1980.

Topics to be discussed at the symposium will include research on

automotive ratings, the direction of future ratings efforts, consideration of alternative rating methods, and marketing issues associated with the dissemination of ratings information. Representatives of government, industry, and consumer interests will present papers on relevant subjects and all participants will have the opportunity to exchange viewpoints at small workshop sessions.

NHTSA invites all interested persons to attend the symposium and participate in the discussion of any of the topics noted above.

Issued on: November 19, 1980.

Michael M. Finkelstein,
Associate Administrator for Rulemaking.

[FR Doc. 80-36659 Filed 11-21-80; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Customs Service

[T. D. 80-279]

Revocation of Customhouse Cartman's License No. 13 Issued by the District Director of Customs, New Orleans, La., to Dave Streiffer Co.

Notice is hereby given that on November 17, 1980, pursuant to the provisions of section 565, Tariff Act of 1930, as amended, and § 112.30 of the Customs Regulations (19 CFR 112.30), it was decided to revoke the Customhouse Cartman's License No. 13 issued in the District of New Orleans on May 20, 1969 to Dave Streiffer Company of New Orleans, Louisiana. This revocation is effective as of December 8, 1980.

William T. Archey,
Acting Commissioner of Customs.

November 17, 1980.

[FR Doc. 80-36543 Filed 11-21-80; 8:45 am]

BILLING CODE 4810-22-M

[T.D. 80-281]

Reimbursable Services—Excess Cost of Preclearance Operations

November 19, 1980.

Notice is hereby given that pursuant to § 24.18(d), Customs Regulations (19 CFR 24.18(d)), the biweekly reimbursable excess costs for each preclearance installation are determined to be as set forth below and will be effective with the pay period beginning November 30, 1980.

Installation	Biweekly excess cost
Montreal, Canada	17,180
Toronto, Canada	27,811
Kindley Field, Bermuda	4,869
Nassau, Bahama Islands	19,522
Vancouver, Canada	12,300
Winnipeg, Canada	1,800
Freeport, Bahama Islands	12,846
Calgary, Canada	6,378
Edmonton, Canada	5,231

Jack T. Lacy,
Comptroller.

[FR Doc. 80-36544 Filed 11-21-80; 8:45 am]
BILLING CODE 4810-22-M

Fiscal Service

[Dept. Circ. 570, 1980 Rev., Supp. No. 11]

Surety Companies Acceptable on Federal Bonds

Certificates of authority as acceptable sureties on Federal bonds are hereby issued to the following companies under Sections 6 to 13 of Title 6 of the United States Code.

Name of Company, Business Address, Underwriting Limitation, and State of Incorporation

Hartford Insurance Company of

Alabama

Hartford Plaza

Hartford, Connecticut 06115

\$128,000

Alabama

Hartford Insurance Company of Illinois

Hartford Plaza

Hartford, Connecticut 06115

\$151,000

Illinois

Hartford Insurance Company of the

Midwest

Hartford Plaza

Hartford, Connecticut 06115

\$203,000

Indiana

Hartford Insurance Company of the

Southeast

Hartford Plaza

Hartford, Connecticut 06115

\$150,000

Florida

Certificates of authority expire on June 30 each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate

their reference copies of the Treasury Circular 570, 1980 Revision, at page 44506 to reflect this addition. Copies of the circular, when issued, may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226.

Dated: November 17, 1980.

W. E. Douglas,

Commissioner, Bureau of Government
Financial Operations.

[FR Doc. 80-36569 Filed 11-21-80; 8:45 am]

BILLING CODE 4810-35-M

Office of the Secretary

[Dept. Circ., Public Debt Series No. 35-80]

Treasury Notes of November 30, 1982, Series Y-1982

November 19, 1980.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately \$4,500,000,000 of United States securities, designated Treasury Notes of November 30, 1982, Series Y-1982 (CUSIP No. 912827 LG 5). The securities will be sold at auction with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities, to the extent that the aggregate amount of tenders for such accounts exceeds the aggregate amount of maturing securities held by them.

2. Description of Securities

2.1. The securities will be dated December 1, 1980, and will bear interest from that date, payable on a semiannual basis on May 31, 1981, and each subsequent 6 months on November 30 and May 31, until the principal becomes payable. They will mature November 30, 1982, and will not be subject to call for redemption prior to maturity.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate,

inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of \$5,000, \$10,000, \$100,000, and \$1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Standard time, Tuesday, November 25, 1980. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, November 24, 1980.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is \$5,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender and the amount may not exceed \$1,000,000.

3.3. All bidders must certify that they have not made and will not make any agreements for the sale or purchase of any securities of this issue prior to the deadline established in Section 3.1. for receipt of tenders. Those authorized to submit tenders for the account of customers will be required to certify that such tenders are submitted under the same conditions, agreements, and certifications as tenders submitted directly by bidders for their own account.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a $\frac{1}{8}$ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g.,

99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accomplished by a payment guarantee as provided in Section 3.5., must be made or completed on or before Monday, December 1, 1980. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, November 28, 1980. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other

documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Supplementary Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 80-36713 Filed 11-20-80; 4:05 pm]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register

Vol. 45, No. 228

Monday, November 24, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., November 25, 1980.

PLACE: 2033 K Street NW., Washington, D.C., fifth floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Continuation of the discussion held on November 18, 1980 of Minimum Financial Requirements.

CONTACT PERSON FOR MORE

INFORMATION: Jane Stuckey, 254-6314.

[S-2133-80 Filed 11-20-80; 10:54 am]

BILLING CODE 6351-01-M

2

FEDERAL COMMUNICATIONS COMMISSION.

The Federal Communications Commission will hold a Special Open Meeting, on the subjects listed below on Tuesday, November 25, 1980, at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item Number, and Subject

General—1—Title: Domestic Implementation of the Final Acts of the 1979 World Administrative Radio Conference.

Summary: The 1979 World Administrative Radio Conference, (WARC) performed a general review and revision of the international Radio Regulations; much of the effort concerned the international Table of Frequency Allocations. The FCC Rules and Regulations must be reviewed in light of the Final Acts of the WARC. The Commission will discuss the implementation of the international provisions in the domestic Rules.

General—2—Title: Policy on use of the High Frequency radio spectrum by Fixed and Land Mobile Services. **Summary:** Use of the

High Frequency (HF) spectrum by the Fixed and Land Mobile Radio services is limited according to provisions of Part 2 of the FCC Rules and Regulations. The 1979 World Administrative Radio Conference reallocated a considerable amount of HF spectrum from the Fixed service to other services, and this could affect domestic use of the HF spectrum. The Commission will discuss the conditions for use of HF radio spectrum by the Fixed and Land Mobile Radio services.

General—3—Title: The Role of the FCC Within the United States Organization for the International Radio Consultative Committee.

General—4—Title: An Inquiry Relating to Preparation for an International Telecommunication Union World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit and the Planning of the Space Services Utilizing It. **Summary:** This proceeding requests public comment concerning Commission preparation for a World Administrative Radio Conference on the use of the geostationary-satellite orbit and the planning of the space service utilizing it. The Conference will be held in two sessions in 1984 and in 1985. This item before the Commission begins the public proceeding for these preparations.

Common Carrier—1—Title: License Contract Agreements and Other Intrasystem Arrangements of the Major Telephone Systems. **Summary:** The Commission will consider whether to initiate an inquiry and proposed rulemaking regarding license contracts and other intrasystem arrangements of the major telephone systems.

Common Carrier—2—Title: In re Bell System Procurement Practices, Docket 80-53; In re Bell Operating Company Procurement of telecommunications Equipment, RM No. 3381. **Summary:** The Commission will consider a Bell proposal submitted in response to its Final Decision in Docket 19129 regarding the procurement practices of the Bell Operating Companies. In addition, the Commission will consider a petition from ITT requesting it to order the Bell Companies to acquire one-third of their telecommunications equipment from General Trade suppliers.

Common Carrier—3—Title: In re application of AT&T et. al. for authority under section 214 to construct a light-guide cable between Cambridge, Massachusetts and Washington, D.C. File No. W-P-C-3071. **Summary:** The Commission will consider an application filed by AT&T and eight associated operating companies to construct and operate a light-guide cable between Cambridge, Massachusetts and Washington, D.C. The proposed construction represents the first major application in the United States of fiber optic technology in the long haul interstate telephone network.

Common Carrier—4—In re Applications of RCA American Communications, Inc. and Southern Satellite Systems, Inc. under Section 214 for a satellite channel of communication. Before the commission are Section 214 applications filed by RCA Americom and Southern Satellite seeking three year authorization of a communication channel via CABLE NET I.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: November 19, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S-2135-80 Filed 11-20-80; 11:26 am]

BILLING CODE 6712-01-M

3

FEDERAL COMMUNICATIONS COMMISSION.

The following item has been deleted at the request of the Common Carrier Bureau from the list of agenda items scheduled for consideration at the November 25, 1980 Special Open Meeting, and previously listed in the Commission's Public Notice of November 18, 1980.

This item has been rescheduled for consideration on December 4, 1980.

Agenda, Item, and Subject

Common Carrier—4—In re Applications of RCA American Communications, Inc. and Southern Satellite Systems, Inc. under Section 214 for a satellite channel of communication. Before the Commission are Section 214 applications filed by RCA Americom and Southern Satellite seeking three year authorization of a communication channel via CABLE NET I.

Additional information concerning this item may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: November 19, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S-2134-80 Filed 11-20-80; 11:26 am]

BILLING CODE 6712-01-M

4

FEDERAL COMMUNICATIONS COMMISSION.

The Federal Communications Commission will hold a Special Closed Meeting, on the subject listed below on Tuesday, November 25, 1980, following the Special Open Meeting, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item Number, and Subject

Hearing—1—Petition for reconsideration filed by Walton Broadcasting, Inc. in the Tucson, Arizona, KIKX renewal proceeding (Docket No. 20287).

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: November 19, 1980.

Federal Communications Commission.

William J. Tricarico,
Secretary.

[S-2136-80 Filed 11-20-80; 11:26 am]

BILLING CODE 6712-01-M

5

FEDERAL ENERGY REGULATORY COMMISSION.**"FEDERAL REGISTER" CITATION OF**

PREVIOUS ANNOUNCEMENT: 45FR 76840, November 20, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., November 25, 1980.

CHANGE IN THE MEETING: The following items have been added:

Item Number, Docket Number, and Company

CAG-21. RP80-131, Natural Gas Pipeline Co. of America.

ER-7. ER80-204, CP National Corp.

M-7. RM80-60, Ex parte and separation of functions rules.

M-7(A). RM78-15, Rules relating to investigation.

M-7(B). RM80- , Amendment to the standards of conduct.

M-8(A). RM80-73, Natural Gas Policy Act of 1978, section 110, gathering allowance.

M-8(B). RM80-74, Natural Gas Policy Act of 1978, section 110, compression allowance.

CP-4. CP80-236, Transcontinental Gas Pipe Line Corp.; CP79-70, Transcontinental Gas Pipe Line Corp. and United Gas Pipe Line Co.; CP80-217, Transcontinental Gas Pipe Line Corp.; CP80-218, Transcontinental Gas Pipe Line Corp. and United Gas Pipe Line Co.; CP80-267, Columbia Gulf Transmission Co. and Southern Natural Gas Co.; CP80-286, Michigan Wisconsin Pipe Line Co.; CP80-251, Michigan Wisconsin Pipe Line Co.; CP80-375, Consolidated Gas Supply Corp., Northern Natural Gas Co., Division of Internorth, Inc., Michigan Wisconsin Pipe Line Co. and El Paso Natural Gas Co.; CP80-384, Michigan Wisconsin Pipe Line

Co.; CP80-82, Michigan Wisconsin Pipe Line Co., Texas Eastern Transmission Corp. and Transcontinental Gas Pipe Line Corp.; CP78-340, Trunkline Gas Co.

Kenneth F. Plumb,
Secretary.

[S-2136-80 Filed 11-20-80; 2:32 pm]

BILLING CODE 6450-85-M

6

METRIC BOARD.

TIME AND DATE: 8:30 a.m., Thursday, December 11, 1980; 8:30 a.m., Friday, December 12, 1980.

PLACE: New Orleans Public Library, auditorium, third floor, 219 Loyola Avenue, New Orleans, Louisiana.

STATUS: Open to the Public—Thursday, December 11, 1980. Closed Session—Friday, December 12, 1980.

MATTERS TO BE CONSIDERED: December 11:

Approval of Agenda.

Review/Approval of Minutes—October Board Meeting.

Committee Reports. Report by the Chairmen of the Public Awareness and Educational Committee, Administrative and Budget Committee, Planning & Coordination Committee, and Research Committee on the status of each Committee's projects and activities.

Consumer Program. Final version of the USMB Consumer Program submitted to the Board for approval.

Worker Tool—First Report. Initial results of the USMB Worker Tool project will be presented to the Board. Topics to be discussed are measurement sensitivity of selected occupations; segments of the worker population most likely to be impacted by metrication, and estimated tool and training costs.

Small Business Impacts. Survey of Small Business to identify the issues in metric planning and conversion to the metric system. A briefing will be presented on the completion of the first phase of the Board's research project on Small Business.

Construction Conference. A report will be made to the Board on the outcome of the December 2 and 3 Construction Community Metric Symposium. Included in the report will be an analysis of the attendance figures, and indication of the overall success of the program, and plans for the future.

State Program. A description of events for the coming year in the State Programs area will be outlined for the Board, including some treatment of the National Council on State Metrication.

Agenda Items for Future Board Meetings. Agenda items to be considered for the February 5 meeting to be held in Washington, D.C.

Update on Canadian Activities. Mr. Paul Boire, Executive Director, Metric Commission Canada, will provide the Board with an update of metric activities in Canada.

December 12:

Approval of FY-81 Financial Plan, FY-81 Operating Plan, and personnel matters. Closed session. These matters are closed under 5 U.S.C. 552(b)(9)(B).

SUPPLEMENTARY INFORMATION: Notice of a Public Forum to be held in conjunction with this meeting on December 11, 1980 which will provide individuals and groups the opportunity to comment on metric conversion appears elsewhere in this issue.

CONTACT PERSON FOR MORE

INFORMATION: Ms. Lu Verne V. Hall, 703/235-1933.

Louis F. Polk,

Chairman, United States Metric Board.

[S-2127-80 Filed 11-20-80; 9:51 am]

BILLING CODE 6820-94-M

7

METRIC BOARD.**AD HOC COMMITTEE ON STATE GOVERNMENT.**

TIME AND DATE: 5 p.m., Wednesday, December 10, 1980.

PLACE: Warwick Hotel, 1315 Gravier Street, Somerset Room, New Orleans, Louisiana 70112.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Review the introduction and Appendices to the State Metric Status Reports.

2. Review and discuss the summary report of the National Council on State Metrication meeting in September.

3. Review and discuss the planned activities of USMB State Programs for calendar year 1981.

CONTACT PERSON FOR FURTHER

INFORMATION: Alan S. Whelihan, 703-235-2583.

Louis F. Polk,

Chairman, United States Metric Board.

[S-2131-80 Filed 11-20-80; 9:59 am]

BILLING CODE 6820-94-M

8

METRIC BOARD.**ADMINISTRATIVE AND BUDGET COMMITTEE MEETING**

TIME AND DATE: 2 p.m., Wednesday, December 10, 1980.

PLACE: New Orleans Public Library, room 1, third floor, 219 Loyola Avenue, New Orleans, Louisiana.

STATUS: Closed session.

MATTERS TO BE CONSIDERED:

December 10:

OMB Proposed Funding Level fiscal year 1982.

Congressional Activity on Appropriation Bills.

Fiscal year 1981 Resource Allocations and Operating Plan.

These matters are closed under 5 U.S.C. 552(b)(9)(B).

CONTACT PERSON FOR FURTHER

INFORMATION: Helen T. Stellman, 703/235-1696.

Louis F. Polk,

Chairman, United States Metric Board.

[S-2129-80 Filed 11-20-80; 9:56 am]

BILLING CODE 6820-94-M

9

METRIC BOARD.

Public Awareness and Education Committee

TIME AND DATE: 10 a.m. to 5 p.m., Wednesday, December 10, 1980.

PLACE: New Orleans Public Library, auditorium, third floor, room 2, 219 Loyola Avenue, New Orleans, Louisiana.

STATUS: Open to the Public, Wednesday, December 10, 1980.

MATTERS TO BE CONSIDERED: December 10:

Approval of September and November minutes.

Public Awareness Philosophy Statements.

Discussion of PAE Philosophy Statements. National Metric Week. Discussion of role of United States Metric Board in National Metric Week.

Metric Certification Program. Discussion of Seal of Approval.

Review of PAE Staff Progress Reports.

Review of activities conducted by PAE Staff over last two months.

"What About Metric" Reprint. Consideration of design and editorial changes for update of publication.

Candidates for Public Forum Presentations.

Report on witness selection for public forum presentations in Albuquerque and Charlotte.

Metric Magazine Public Service

Announcements. Audition of selected radio public service announcements.

Suburban Press Columns. Presentation for discussion of sample news columns being produced on the contract.

Public Forum Questionnaire. Discussion of questionnaire developed to determine effectiveness of various means used to announce public forums.

CONTACT PERSON FOR FURTHER

INFORMATION: John Donnelly, 703/235-2820.

Louis F. Polk,

Chairman, United States Metric Board.

[S-2132-80 Filed 11-20-80; 10:02 am]

BILLING CODE 6820-94-M

10

METRIC BOARD.

Public forum

Notice is hereby given that the United States Metric Board will hold a Public Forum on Thursday, December 11, 1980, from 10 a.m. to 12:30 p.m. The Forum will be held in conjunction with the Metric Board's regular bi-monthly meeting. Notice of the regular meeting

appears in the Sunshine Meeting section of this issue. The Forum and meeting will be held at the New Orleans Public Library, Auditorium, Third Floor, 219 Loyola Avenue, New Orleans, Louisiana.

The purpose of the Forum will be to allow Board Members to receive comments about increased metric usage and voluntary metric conversion from individuals and from representatives of groups or organizations. The public is invited and encouraged to provide oral or written comments and ask questions of the Board from 11:30 a.m. to 12:30 p.m. Those who wish to participate may also submit comments or questions in advance to Douglas Bernon, Office of Public Awareness and Education, United States Metric Board, The Magazine Building, 1815 North Lynn Street, Suite 600, Arlington, Virginia 22209.

Louis F. Polk,

Chairman, United States Metric Board.

[S-2128-80 Filed 11-20-80; 9:54 am]

BILLING CODE 6820-94-M

11

METRIC BOARD.

Research Committee

TIME AND DATE: 9 a.m., Wednesday, December 10, 1980.

PLACE: Warwick Hotel, 1315 Gravier Street, Somerset Room, New Orleans, Louisiana 70112.

STATUS: Parts will be open to the public and parts will be closed to the public.

MATTERS TO BE CONSIDERED: Parts open to the public:

Two Briefings on Research Activities: (1) A general status report of all research projects and activities; (2) A briefing of the results of the Part A Report of the Effects of Metric Conversion on Measurement and Dimensionally Sensitive Occupations.

Parts closed to the public:

A briefing to the Research Committee of the preliminary results of the U.S. Metric Board's Survey of Small Business to Identify Issues in Metric Planning and Conversion to the Metric System for the Research Committee's deliberations and recommendations to the Board. This matter is closed to the public under 5 USC 522b(9)(B).

CONTACT PERSON FOR MORE

INFORMATION: G. Edward McEvoy, Director of Research United States Metric Board, 1815 N. Lynn Street, Suite 600, Arlington, Virginia 22209 at (703) 235-2583.

Louis F. Polk,

Chairman, United States Metric Board.

[S-2130-80 Filed 11-20-80; 9:58 am]

BILLING CODE 6820-94-M

12

[NM-80-39]

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 2 p.m., Friday, December 5, 1980.

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, D.C. 20594.

STATUS: Open.

MATTER TO BE CONSIDERED: Briefing on Planned Accident Data Systems.

CONTACT PERSON FOR MORE

INFORMATION: Sharon Flemming, 202-472-6022.

November 20, 1980.

[S-2137-80 Filed 11-20-80; 12:01 pm]

BILLING CODE 4910-58-M

13

NUCLEAR REGULATORY COMMISSION.

DATE: Week of November 24.

STATUS: Open/Closed.

MATTERS TO BE CONSIDERED:

Wednesday, November 26

10:00 a.m.—Discussion of Management-Organization and Internal Personnel Matters (Approx 2 hrs) (Closed-Exs. 2, 6).

2:00 p.m.—1. Briefing on Environmental Releases at NFS-Erwin and Other Fuel Cycle Plants (Approx 1 hr) (Public Meeting); 2. Affirmation Session (Approx 10 min) (Public Meeting)—a. Indemnification of Licensees for Offsite Fuel Storage; b. Reappointment of ACRS Member; c. Protection of Unclassified Safeguards Information; d. Petition for Rule Making from Public Citizen Litigation Group on Required Levels of Financial Protection.

ADDITIONAL INFORMATION: The Discussion of Proposed New Order on Psychological Stress at TMI-1 rescheduled from November 14 to November 20 at 2:00 p.m.

Automatic telephone answering service for schedule update: (202) 634-14198. Those planning to attend a meeting should verify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee (202) 634-1410.

Walter Magee,

Chief, Operations Branch, Office of the Secretary.

November 19, 1980.

[S-2141-80 Filed 11-20-80; 3:45 pm]

BILLING CODE 7590-01-M

Reader Aids

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Monday, November 24, 1980

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

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DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

COMMODITY FUTURES TRADING COMMISSION

- 70441 10-24-80 / Amendment to Financial reporting provision of the Conduct Regulation

ENERGY DEPARTMENT

Office of Controller—

- 70429 10-24-80 / General policy for pricing and charging for materials and services sold by the Department of Energy

ENVIRONMENTAL PROTECTION AGENCY

- 70448 10-24-80 / Approval and disapproval of rule revisions for five air pollution control districts

- 70448 10-24-80 / California; rule revisions of five air pollution control districts

- 70449 10-24-80 / Illinois, approval of sulfur dioxide plan; State Implementation Plan for Commonwealth Edison Kincaid Station

- 70728 10-24-80 / Requirement to submit notice of manufacture or importation of PBBs and Tris

GENERAL SERVICES ADMINISTRATION

- 66009 10-6-80 / Automatic data processing contracting

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office—

- 70445 10-24-80 / Montana; approval of Abandoned Mine Reclamation Plan

JUSTICE DEPARTMENT

Immigration and Naturalization Service—

- 70428 10-24-80 / Inspection procedure for Canadian residents entering U.S. by small craft

- 70427 10-24-80 / Redesignation of Ajo, Ariz. and Naco, Ariz. substations as border patrol stations

TRANSPORTATION DEPARTMENT

Coast Guard—

- 70262 10-23-80 / Compatibility of bulk liquids and liquefied gas on vessels

Research and Special Programs Administration—

- 70390 10-23-80 / Liquefied natural gas facilities; Federal Safety Standards (certain provisions)

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms—

- 63242 9-23-80 / Unlawful trade practices under the Federal Alcohol Administration Act

[Corrected at 45 FR 66007, 10-6-80]

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**. A complete cumulative listing through Public Law 96-483 was published in the **Reader Aids** section of the issue of Wednesday, November 5, 1980.

Last Current Listing October 24, 1980

Code of
Federal
Regulations





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Revised as of July 1, 1980

Quantity	Volume	Price	Amount
_____	Title 38—Pensions, Bonuses, and Veterans' Relief	\$11.00	\$ _____
_____	Title 39—Postal Service	6.00	_____
_____	Title 41—Public Contracts and Property Management (Chapter 8)	4.50	_____
Total Order			\$ _____

A Cumulative checklist of CFR issuances for 1980 appears in the back of the first issue of the Federal Register each month in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

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11-24-80
Vol. 45—No. 228
BOOK 2:
Pages
77701-78116

Federal Register

Book 2 of 2 Books
Monday, November 24, 1980

Part II

United States Regulatory Council

CALENDAR OF FEDERAL REGULATIONS

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| 77747 | Chapter 2—Environment and Natural Resources |
| 77782 | Chapter 3—Finance and Banking |
| 77804 | Chapter 4—Health and Safety |
| 77898 | Chapter 5—Human Resources |
| 77924 | Chapter 6—Trade Practices |
| 77964 | Chapter 7—Transportation and Communication |
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| 78034 | Index II—Date of Next Regulatory Action |
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UNITED STATES REGULATORY COUNCIL

AGENCY: The United States Regulatory Council.

ACTION: Calendar of Federal Regulations.

SUMMARY: The United States Regulatory Council publishes the Calendar of Federal Regulations in order to provide a comprehensive catalog of important Federal regulations under development by participating agencies. This is the fourth edition. We publish the Calendar every six months, in November and May.

We designed the Calendar to provide in one place a concise summary of important regulations under development. It is a tool to increase public awareness of and participation in the regulatory process.

Special indices and appendices to the Calendar should help readers quickly identify the items that might be of most interest; other indices and appendices describe how to participate in the rulemaking process at each Council department and agency.

ADDRESS: United States Regulatory Council, Washington, DC 20503.

FOR FURTHER INFORMATION: For information about specific regulations, please refer to the "Agency Contact" listed at the end of each entry.

For information on the work of the Council: Peter J. Petkas, Director, United States Regulatory Council, Washington, DC 20503, (202) 395-6110.

For information on the Calendar: Mark G. Schoenberg, Associate Director, United States Regulatory Council, Washington, DC 20503, (202) 653-7240.

SUPPLEMENTARY INFORMATION:

LETTER FROM THE DIRECTOR OF THE UNITED STATES REGULATORY COUNCIL

November 1980 marks the second anniversary of the United States Regulatory Council, and the fourth edition of the *Calendar of Federal Regulations*.

During the past two years, the Council has worked, together with its 38 agencies, to improve coordination of Federal regulatory activities and to encourage more effective management of the regulatory process.

Presently, Douglas M. Costle, Administrator of the Environmental Protection Agency, serves as Chairman of the Regulatory Council; Susan B. King, Chairman of the Consumer Product Safety Commission, serves as Vice-Chairman; I am the Council's

Director; and Kate C. Beardsley is the Deputy Director.

The Council works to eliminate duplication and inconsistencies in existing and proposed rules; to provide the public with information about the regulatory process; and to help improve that process so that regulations can accomplish their objectives in the least burdensome and most efficient ways.

The *Calendar of Federal Regulations* provides a comprehensive overview of important regulations that agencies are developing and a summary of the analytical bases for them. It is designed to encourage greater public participation in the regulatory process, identify areas of multiple regulatory impact, and assist the regulators in developing cost-effective and consistent regulations.

The *Calendar of Federal Regulations* is an important tool for the President, the Congress, the regulators, and the public to understand and shape the way we implement national regulatory policy goals. The *Calendar* is also the first comprehensive and continually updated catalog of important Federal regulations that are under development. With the *Calendar* and the semiannual regulatory agendas now published by each agency under President Carter's Executive Order on Improving Government Regulations (E.O. 12044; 3 CFR 1980 Comp., p. 152; extended by E.O. 12221; 45 FR 44249, July 1, 1980), interested persons can follow most of the regulatory activity under way in the Federal Government.

The *Calendar of Federal Regulations* is a cooperative product of the Regulatory Council staff and the staffs of Council agencies, as are most Council projects. I am proud of the contribution the *Calendar* has made to regulatory reform in the last 21 months.

The *Calendar's* usefulness in both reflecting and stimulating agency reform is exemplified by another Regulatory Council project: Innovative Techniques. "Innovative techniques" are alternatives to the traditional "command-and-control" form of regulation, which often sets detailed uniform requirements and relies primarily on formal Government sanctions against violators. The eight alternative approaches include providing economic incentives, shifting to performance-oriented standards, and relying on competitive market forces to meet regulatory goals. The Council's Innovative Techniques project is actively promoting these methods by helping agency personnel—those who actually write new regulations—to understand their practical advantages. The project is implementing a Presidential Mandate to find new application of innovative techniques

(Alternative Approaches to Regulation, *Weekly Compilation of Presidential Documents*, Vol. 16, p. 1109).

Just over one year ago, the Council provided regulatory agencies with the first systematic guidance to help them describe their use of innovative techniques for the second edition of the *Calendar* (44 FR 68201, November 28, 1979). Since that time, the agencies have rapidly increased their use of innovative techniques; the present *Calendar* describes nearly three times the number of applications as the November 1979 edition—and over one-half of all entries now contain an innovative technique among the alternatives under consideration. (Index I notes the regulations for which the agencies are considering these techniques.) Clearly, Council agencies are beginning to shift toward more flexible, less burdensome ways to solve regulatory problems. I think the *Calendar* itself—by recording the variety of practical ways agencies use innovative techniques—is one important factor in getting both the regulators and the public to appreciate their potential for improving regulation.

Other Council activities have included:

- Developing national policies on major regulatory issues, such as the control of cancer-causing chemicals;
- Resolving special regulatory problems of small businesses;
- Organizing interagency efforts to manage better the regulatory environment of special industries, such as automobiles and nonferrous metals;
- Producing an industry-specific calendar—the *Automobile Calendar*—to present a summary of all regulatory activities that may affect the automobile industry;
- Identifying and reducing conflicting regulations or actions affecting single industries, such as hospitals and coal producers;
- Assessing the benefits of regulation; and
- Improving regulatory methods, such as regulatory analysis and the evaluation of existing regulations.

We designed the *Calendar of Federal Regulations* as a tool for the user to locate easily information on the regulations described in it, and to help them to participate effectively in the Federal regulatory process. We surveyed many of those who used the previous three editions and incorporated many of their suggestions for improving the document.

We hope to continue to improve each edition and ask your help in doing so. Please send us any comments and suggestions that would make this document more useful to you. You can

do this by completing the questionnaire in the back of this edition or by writing to us. We would appreciate hearing from you.

Dated: November 20, 1980

Peter J. Petkas

Director

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COUNCIL MEMBERS AND THE CALENDAR

The Regulatory Council is composed of 38 Federal departments and agencies. Twenty executive agencies are participating members, and 18 independent regulatory agencies contribute to the activities of the Council in various ways. The extent of an independent regulatory agency's activity in any Council project is

determined by the independent agency. They may observe or fully participate in any Council activity as they choose. All Council agencies have submitted information for some sections of this Calendar. For a variety of reasons, the five agencies identified with an asterisk (*) in the following list have not submitted entries describing regulations under development to this edition. These agencies do not issue regulations of the type covered by this document, though they do conduct some forms of activity related to the regulatory process, such as analysis of administrative procedures or administrative adjudications.

Executive Agencies

* Administrative Conference of the United States
 Department of Agriculture
 Department of Commerce
 Department of Education
 Department of Energy
 Department of Health and Human Services
 Department of Housing and Urban Development
 Department of the Interior
 Department of Justice
 Department of Labor
 Department of Transportation
 Department of the Treasury
 Environmental Protection Agency
 Equal Employment Opportunity Commission
 Federal Emergency Management Agency
 General Services Administration
 National Credit Union Administration
 Small Business Administration
 * United States International Trade Commission
 Veterans Administration

Independent Regulatory Agencies

Civil Aeronautics Board
 Commodity Futures Trading Commission
 Consumer Product Safety Commission
 Federal Communications Commission
 Federal Deposit Insurance Corporation
 Federal Election Commission
 Federal Energy Regulatory Commission
 Federal Home Loan Bank Board
 Federal Maritime Commission
 * Federal Mine Safety and Health Review Commission
 Federal Reserve System
 Federal Trade Commission
 Interstate Commerce Commission
 * National Labor Relations Board
 Nuclear Regulatory Commission
 * Occupational Safety and Health Review Commission
 Postal Rate Commission
 Securities and Exchange Commission

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In addition, the Council will republish the Calendar in a paperback book format. It will be available from the Superintendent of Documents as Stock No. 052-003-00786-0 at \$9.00 each.

HOW TO USE THE CALENDAR

The Calendar is organized to help users locate information about regulations of interest to them. The Calendar contains a letter from Regulatory Council Director Peter J. Petkas; a table of contents; a section on how to use the Calendar; a list of abbreviations; a list of regulations covered in this edition; seven chapters describing these regulations; three indices; and four appendices.

The section on how to use the Calendar explains the basic organization of the Calendar, how to use its individual components, the criteria the agencies used to select the regulations reported, the type of information available in each entry, and the limitations on the data presented.

We have divided the entries describing regulations into seven chapters; each covers a major area of Federal regulatory activity.

The chapters are:

Energy: Developing and conserving energy resources.

Environment and Natural Resources: Protecting the environment and protecting and developing natural resources.

Finance and Banking: Regulating banks, financial institutions, and securities and commodity markets.

Health and Safety: Promoting and protecting human health and safety, including consumer product and workplace safety.

Human Resources: Promoting social justice and non-discrimination, and managing social services.

Trade Practices: Promoting fair business and trade practices.

Transportation and Communication: Promoting and regulating different modes of transportation and communication.

Within each Chapter, we present the entries in alphabetical order, first by executive and then by independent agencies. The entries are further alphabetized by issuing office, if any, and then by the title of the entry.

We have created seven indices and appendices to aid *Calendar* readers to locate easily information that may be important to them and to help them learn more about the process of developing regulations.

Separate indices identify sectors affected by each proposal, the estimated date of the next regulatory action, and information on opportunities for public participation in developing the individual regulations, where applicable.

The appendices include sections on public participation procedures in each agency, status of the regulations reported in the last edition on the *Calendar*, but absent from this edition, publication dates for each agency's semiannual Regulatory Agenda, and important regulations scheduled for agency review under the provisions of Executive Order 12044.

Each index and appendix begins with a brief description of its contents, and how to use it.

ABOUT THE ENTRIES

Council agencies submitted entries that describe their regulations under development. These entries comprise the body of the *Calendar*.

Criteria for Selection

This edition of the *Calendar* provides an overview of important regulations *under development* by Regulatory Council agencies. Each agency submitted entries for the *Calendar* according to several criteria. At a minimum, agencies were asked to use the same criteria as those they use for determining when to prepare Regulatory Analyses under the general guidelines in Executive Order 12044, Improving Government Regulations (3 CFR 1980 Comp., p. 152; extended by E.O. 12221; 45 FR 44249, July 1, 1980).

Under the Executive Order, executive agencies (and those independent agencies that choose to do so) are to prepare regulatory analyses at least for those regulations:

- that are likely to have an annual effect on the economy of \$100 million or more; or
- that may impose a major increase in costs or prices for individual industries, levels of government, or geographic regions.

In addition to these criteria, agencies have submitted reports on regulations for this *Calendar* that concern:

- Precedent-setting rules.
- Issues of great public interest.
- Rules that may increase productivity and/or profits without causing any adverse effects.
- Grants and income transfer program regulations that may impose annual

compliance costs of \$100 million or more.

• Regulations that the agency is repropounding after review pursuant to Executive Order 12044, if the proposed change will have important consequences.

Any regulation which the agency reported in the third edition of the *Calendar* is also reported in this edition unless it has been issued as a final rule or withdrawn. If so, we have noted this action in Appendix II: Status of Regulations from May 1980 Edition.

The regulations covered in the *Calendar*, that is, those that are *under development*, are those for which an agency is reasonably likely to issue an Advance Notice of Proposed Rulemaking (ANPRM), a Notice of Proposed Rulemaking (NPRM), a Final

Rule, or to take other significant action *within the next twelve months*.

For clarity and consistency, the Council staff asked all agencies in writing their *Calendar* entries to follow a set of guidelines we developed in consultation with the agencies and the Office of Management and Budget, the Council of Economic Advisors, the Council on Wage and Price Stability, and others in the Executive Office of the President. In addition, we publish the guidelines for the *Calendar* in the *Federal Register*, and we incorporate public comments in the guidelines we issue for each new edition. A copy of the full set of Regulatory Council guidelines used by agencies in preparing submissions to this edition of the *Calendar* is available from the Council at 45 FR 62304, September 18, 1980.

Contents of Entries

Category—Each <i>Calendar</i> entry describes a regulation and contains the following standard categories of information	Content—the following information is provided in each category
Title and CFR Citation	Title of the regulation under development and the CFR citation for the regulation. An asterisk (*) after the CFR citation indicates that the regulation will be a revision to an existing regulation that has been codified in the CFR. If the regulation under development will occupy a new CFR section, there is no asterisk. If there is no CFR citation, the regulation has not yet been assigned a place in the CFR.
Legal Authority	A citation of the statutory authority under which the agency undertakes the regulatory action.
Reason for Including This Entry	A brief statement of the importance of the regulation under development.
Statement of Problem	A brief discussion of the problem that the regulation is addressing.
Alternatives Under Consideration	A brief description of the major choices the agency is considering to achieve its regulatory objectives.
Summary of Benefits	A discussion of the expected direct and indirect benefits of the regulatory action to the sectors of the economy, population, government, etc. that will be affected.
Sectors Affected	A listing of those sectors that may benefit as a result of the proposal. Where possible, we use SIC terminology in listing the sectors.
Summary of Costs	A discussion of the expected direct and indirect costs of this action to the sectors of the economy, population, government, etc., that may be affected.
Sectors Affected	A listing of the sectors that may bear costs as a result of the proposal. Where possible, we use SIC terminology in listing the sectors.
Related Regulations and Actions	A description of other regulations or actions, either within or outside the agency, that are related to the regulation under consideration.
Active Government Collaboration	The steps the agency is taking to coordinate the proposed regulation with any other Federal, State, or local agencies.
Timetable	A chronological listing of the future major steps the agency will take to develop the regulation.
Available Documents	A list of major background documents related to the proposed regulation, and notice of where they may be obtained or read.
Agency Contact	The name, address, and telephone number of a person in the agency who can respond to questions about the proposed regulation.

Data Limitations

Agencies prepared entries for this edition of the *Calendar* to give the public the earliest possible notice of their schedules for proposing and promulgating regulations. They have tried to predict their future plans accurately, but dates and schedules are still tentative. Agencies may withdraw some of the entries they have listed, or they may promulgate or propose other regulations not included in this edition. Agency actions in the rulemaking process may occur before or after the dates they have listed in the *Calendar*. The *Calendar* does not create a legal,

obligation on submitting agencies to adhere to schedules within it or to confine their regulatory activities to those regulations that appear. The information in this edition is accurate as of November 1, 1980, in the judgment of the submitting agencies.

Readers should note that information on costs, benefits, and other economic effects makes up only a part of the basis for decisions in regulatory agencies. In particular, agencies do not mechanically add up estimates of costs of the one hand, and benefits on the other, and then act on the basis. Furthermore, there is considerable disagreement about methods used for estimating costs,

benefits, and other economic impacts. Necessarily, agencies that include economic information in the **Calendar** have not used a common methodology in producing it. Therefore, such information, when expressed quantitatively, cannot and should not be added together.

LIST OF ABBREVIATIONS

The following abbreviations appear throughout this edition of the **Calendar**:

ANPRM—The Advance Notice of Proposed Rulemaking is a preliminary notice that an agency is considering a regulatory action. The agency issues an ANPRM before it develops a detailed proposed rule. The ANPRM usually describes the general area that will be subject to the regulation, lists the alternatives that the agency is considering, and asks for public comment on the proposed regulation.

CFR—The Code of Federal Regulations is a codification of the general and permanent rules published in the **Federal Register** by the departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. The Office of the Federal Register revises it annually.

E.O.—An Executive order is a Presidential directive to executive agencies that the President issues under Constitutional or statutory authority. For certain E.O.s, independent agencies may voluntarily comply. E.O.s are published in the **Federal Register** and in Title 3 of the Code of Federal Regulations.

FR—The **Federal Register** is a daily Federal Government publication that announces all proposed and final Federal regulations. It also contains notices of public meetings and other events Federal agencies may schedule. Most major libraries carry the **Federal Register**.

FY—Fiscal year is a budget term. The Federal fiscal year runs from October 1 to September 30, as opposed to the calendar year, which runs from January 1 to December 31.

NTIS—The National Technical Information Service of the Department of Commerce is the central point in the United States for the public sale of Government-funded research and development reports and other analyses prepared by Federal agencies, their contractors, or grantees.

NPRM—The Notice of Proposed Rulemaking is the document an agency issues and publishes in the **Federal Register** that solicits public comments on a proposed regulatory

action. Under the Administrative Procedure Act, it must include, at a minimum:

- a statement of the time, place, and nature of the public rulemaking proceeding;
- reference to the legal authority under which the rule is proposed; and
- either the terms or substance of the regulation under development, or a description of the subjects and issues involved.

SIC—The Standard Industrial Classification Manual, published by the Office of Management and Budget in the Executive Office of the President, defines industries in accordance with the composition and structure of the economy and covers the entire field of economic activities. The **Calendar of Federal Regulations** uses SIC terminology, whenever possible, throughout the "Sectors Affected" sections.

U.S.C.—The United States Code contains a consolidation and codification of all general and permanent laws of the United States. The U.S.C. is divided into 50 titles which represent broad areas of Federal law.

LIST OF AGENCY ACRONYMS

Executive Agencies

ACUS—Administrative Conference of the United States
USDA—U.S. Department of Agriculture
AMS—Agricultural Marketing Service
FmHA—Farmers Home Administration
FNS—Food and Nutrition Service
FS—Forest Service
FSQS—Food Safety and Quality Service
SCS—Soil Conservation Service
DOC—Department of Commerce
ITA—Industry and Trade Administration
MARAD—Maritime Administration
NMFS—National Marine Fisheries Service
NOAA—National Oceanic and Atmospheric Administration
NTIA—National Telecommunications and Information Administration
OCZM—Office of Coastal Zone Management
ED—Department of Education
OCR—Office for Civil Rights
OERI—Office of Educational Research and Improvement
OESE—Office of Elementary and Secondary Education
OPE—Office of Post-Secondary Education
DOE—Department of Energy
CS—Conservation and Solar Applications

ERA—Economic Regulatory Administration
RA—Resource Applications
HHS—Department of Health and Human Services (formerly Department of Health, Education, and Welfare)
FDA—Food and Drug Administration
HCFA—Health Care Financing Administration
HUD—Department of Housing and Urban Development
FHA—Federal Housing Administration
HOUS—Office of the Assistant Secretary for Housing
NVACP—Neighborhoods, Voluntary Associations, and Consumer Protection
OS—Office of the Secretary
DOI—Department of the Interior
BLM—Bureau of Land Management
FWS—Fish and Wildlife Service
GS—Geological Survey
HCRS—Heritage Conservation and Recreation Service
NPS—National Park Service
OSM—Office of Surface Mining
WPRS—Water and Power Resource Service
DOJ—Department of Justice
CRD—Civil Rights Division
INS—Immigration and Naturalization Service
LEAA—Law Enforcement Assistance Administration
OJARS—Office of Justice Assistance, Research, and Statistics
DOL—Department of Labor
ESA—Employment Standards Administration
ETA—Employment and Training Administration
LMSA—Labor Management Services Administration
MSHA—Mine Safety and Health Administration
OSHA—Occupational Safety and Health Administration
PWBP—Pension Welfare Benefits Program
DOT—Department of Transportation
FAA—Federal Aviation Administration
FHWA—Federal Highway Administration
FRA—Federal Railroad Administration
NHTSA—National Highway Traffic Safety Administration
OST—Office of the Secretary of Transportation
RSPA—Research and Special Programs Administration
USCG—United States Coast Guard
TREAS—Department of the Treasury
ATF—Alcohol, Tobacco, and Firearms Bureau
CUSTOMS—U.S. Customs Service

OCC—Office of the Comptroller of the Currency
 EPA—Environmental Protection Agency
 OANR—Office of Air, Noise, and Radiation
 OMSAPC—Office of Mobile Source Air Pollution Control
 OPTS—Office of Pesticides and Toxic Substances
 OWWM—Office of Water and Waste Management
 EEOC—Equal Employment Opportunity Commission
 OCC—Office of the General Counsel
 OPI—Office of Policy Implementation
 FEMA—Federal Emergency Management Agency
 GSA—General Services Administration
 FPRS—Federal Property Resources Service
 HRO—Administration Operations Division
 NARS—National Archives and Records Services
 NCUA—National Credit Union Administration
 SBA—Small Business Administration
 USITC—United States International Trade Commission
 VA—Veterans Administration
 DMA—Department of Memorial Affairs
 OHG—Office of Human Goals

Independent Regulatory Agencies

CAB—Civil Aeronautics Board
 CFTC—Commodity Futures Trading Commission
 CPSC—Consumer Product Safety Commission
 FCC—Federal Communications Commission
 FDIC—Federal Deposit Insurance Corporation
 FEC—Federal Election Commission
 FERC—Federal Energy Regulatory Commission
 FHLBB—Federal Home Loan Bank Board
 FMC—Federal Maritime Commission
 FMSHRC—Federal Mine Safety and Health Review Commission
 FRS—Federal Reserve System
 FTC—Federal Trade Commission
 ICC—Interstate Commerce Commission
 NLRB—National Labor Relations Board
 NRC—Nuclear Regulatory Commission
 OSD—Office of Standards Development
 OSHRC—Occupational Safety and Health Review Commission
 PRC—Postal Rate Commission
 SEC—Securities and Exchange Commission

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Regulations on the Construction, Location, Ownership, and Operation of Ocean Thermal Energy Conversion (OTEC) Facilities and Plantships (15 CFR Part 1001)

Legal Authority

Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. § 9101 *et seq.*

Reason for Including This Entry

These regulations are of significant public interest and may create a major impact on the economy by providing a new legal system under which various commercial Ocean Thermal Energy Conversion (OTEC) operations may proceed.

Statement of Problem

OTEC facilities and plantships (a plantship is basically an OTEC facility that floats unmoored or moves through the water) will produce electric power from the thermal differential between warm ocean surface waters and cold, deep (approximately 1,000 meters) waters. The electricity generated could be fed ashore by cable and distributed via normal electric distribution grids, or it could be used at sea to produce ammonia or other chemical or metallurgical products. The industry is in a formative stage at present, because although the basic principles of OTEC

power generation have been tested, the hardware, engineering, and operational requirements of commercial-scale OTEC operations are yet to be developed and will require very substantial capital investments of tens or hundreds of millions of dollars.

Several U.S. shipyards, engineering firms, makers of electrical generating equipment, and electricity and ammonia suppliers have expressed significant interest in building and operating demonstration-scale and commercial-scale OTEC facilities. The U.S. national interest in OTEC grows out of its potential as an alternative (non-fossil fuel, non-nuclear) energy source. The U.S. House of Representatives' Committee on Merchant Marine and Fisheries, Subcommittee on Oceanography, estimates that OTEC could produce as much as 10 percent of the U.S. electrical generating capacity by the year 2000, and up to 25 percent of all new electrical generating capacity coming on-line between now and the year 2000, if the OTEC program is successful and aggressively pursued (see House Report No. 96-944, at page 25). The OTEC principle can be applied most economically in areas where the thermal differential between surface and deep waters is about 20° C or more; this constraint dictates that U.S. use of OTECs will be limited to the Gulf of Mexico and the southeastern United States and to U.S. island areas such as Hawaii, Puerto Rico, the U.S. Virgin Islands, and the U.S. Western Pacific islands.

These proposed regulations will implement the Ocean Thermal Energy Conversion Act of 1980 (the Act), which authorizes the Administrator of NOAA to license (and requires persons to obtain licenses prior to) the construction, location, ownership, and operation of: (1) OTEC facilities connected to the United States by pipeline or cable; (2) OTEC facilities located in the territorial sea of the U.S.; (3) OTEC plantships documented under the laws of the United States; and (4) OTEC plantships that are constructed, owned or operated by U.S. citizens.

The Act requires NOAA to issue regulations with respect to licensing of these OTEC facilities and plantships.

Along with its licensing provisions, the Act is intended to: (1) establish a legal system to encourage the development of OTEC as a commercial energy technology; (2) protect the marine and coastal environment and the interests of other users of the territorial sea, Continental Shelf, and high seas, and foreign nations that may be affected by a thermal plume (heated discharge) from an OTEC; and (3) ensure that

Federal OTEC-related actions are consistent with approved State coastal zone management plans. The Act requires NOAA to issue final implementing regulations by August 3, 1981.

Alternatives Under Consideration

NOAA is just beginning its rulemaking process to implement the Act. The Agency has only begun to identify issues that we could treat in alternative ways. In developing these OTEC regulations, NOAA will address issues which may fall in several broad areas, including: (1) the amount and type of financial, technical, environmental, and other information that an applicant must submit with an application; (2) criteria for selecting OTEC projects when there are multiple applicants for the same geographic area; (3) environmental safeguards; (4) environmental monitoring requirements; and (5) the prevention of interference by one OTEC facility or plantship with another, and with other users of the territorial sea, Continental Shelf, and high seas.

In identifying and evaluating alternatives for the development of OTEC regulations for each of these general areas, NOAA first would define the basic objectives for each, and then evaluate alternative approaches. Three general approaches are for NOAA to:

(A) Address these areas in substantial detail in its regulations, providing specific terms that would apply to all OTEC operations. If experience later revealed that such degree of detail and extent of requirements were unnecessary, we could reduce them.

(B) Address an area in a more general way in its regulations, and then apply the concepts in those regulations to the specific facts and site characteristics associated with each license or permit, relying more on individual terms, conditions, and restrictions for detail.

(C) Employ less detailed requirements in both the regulations and the terms, conditions, and restrictions for each OTEC license, and rely on the subsequent monitoring specified in the Act to ascertain whether additional requirements were needed in the future.

In considering alternative approaches to these regulations, NOAA will assess the feasibility of relying on certain innovative techniques which may allow more flexibility for OTEC builders, owners, or operators while still accomplishing the purposes and requirements of the Act. For instance, NOAA may be able to rely on general environmental performance standards or parameters, rather than specifying detailed requirements concerning use of specified types or models of equipment

or specified operating procedures. NOAA also may provide generalized guidance in its regulations for meeting the requirements of the Act, but then make it the responsibility of the applicant to specify in detail in its application how it will meet these requirements. Once we issued a license, we would expect the OTEC builder, owner, or operator to conduct its activities according to the terms of its application. NOAA will consider impacts on small business from the regulations.

Summary of Benefits

Sectors Affected: Ocean thermal energy production; ship-building and repairing; manufacturing of electric transmission and distribution equipment and electric industrial apparatus; electric utilities; production of ammonia, fertilizer, aluminum, and other energy intensive products; inhabitants of the U.S. southeastern and Gulf of Mexico states, the U.S. Virgin Islands, Puerto Rico, Hawaii, and the U.S. Pacific island possessions and territories; and the general public.

Commercialization of the OTEC technology under the new legal system of the Ocean Thermal Energy Conversion Act and the proposed regulations could generate benefits to the ship-building and repairing industry that would construct and maintain the OTEC facilities and plantships. Electrical equipment manufacturers would benefit from any additional demand for electric generation and transmission equipment. Energy intensive industries such as production of ammonia, some fertilizers, and aluminum would benefit from availability of a competitively priced alternative source of electric power. Areas of the United States adjacent to ocean waters which contain thermal differentials sufficient to support OTEC power generation would benefit from availability of a non-fossil, non-nuclear energy supply and consequent reduction of costs or risks associated with fossil or nuclear fuel. The regulations will provide the framework for development of a new OTEC industry, which will benefit those owning and operating OTEC facilities or plantships as a business. The Regulatory Analysis which NOAA will prepare on these regulations will quantify these benefits.

Summary of Costs

Sectors Affected: Suppliers of fossil and nuclear fuel for electric power production; suppliers of natural gas for production of ammonia, fertilizer, aluminum, and other energy intensive

products; construction of land-based electric power plants; inhabitants of the U.S. southeastern and Gulf of Mexico states, the U.S. Virgin Islands, Puerto Rico, Hawaii, and the U.S. Pacific Island possessions and territories; and ocean thermal energy production.

Some companies whose business is based on supplying fossil or nuclear fuel for electric power production may lose market opportunities to the extent OTEC facilities or plantships are built on a commercial scale and replace other sources of energy. Suppliers of natural gas feedstocks for production of ammonia and other energy intensive products would suffer some market displacement as OTEC power becomes available for ammonia production from air and seawater. To the extent that availability of OTEC electric power in affected areas of the U.S. results in economic development which causes environmental or socioeconomic problems, some costs may be incurred in the areas where OTECs operate. Persons applying to construct, own or operate OTEC facilities or plantships will incur costs in assembling the financial, technical, environmental, and other information required for the license application, and in complying with license conditions relating to matters such as environmental protection and monitoring and non-interference with other users of the ocean. The Regulatory Analysis will address these costs in more detail.

Related Regulations and Actions

Internal: None.

External: Under the Act, the Coast Guard must issue regulations governing documentation, design, construction, alteration, equipment, maintenance, repair, inspection, certification, and manning of OTEC facilities and plantships. The Coast Guard also is to issue, after consulting with the Administrator of NOAA, regulations governing the movement and navigation of OTEC plantships to insure that the thermal plume from the plantship generally does not unreasonably impinge upon and degrade the thermal gradient (the net temperature differential between warm surface waters and cold deep waters) of another OTEC facility or plantship, or adversely affect the territorial sea or natural resource jurisdiction zone of a foreign nation. NOAA also must consult the Coast Guard before deciding whether to issue regulations governing site evaluation and preconstruction activities. NOAA and the Coast Guard may "jointly or severally" issue enforcement regulations. The

Environmental Protection Agency may prepare regulations applicable to OTEC facilities and plantships under the National Pollutant Discharge Elimination System program under the Clean Water Act. The Secretary of Energy may determine, after consultation with the Administrator of NOAA, which substantive requirements of Title I of the Act will apply to OTEC demonstration projects. NOAA must consult with "the Secretary of Energy and the heads of other Federal agencies" before issuing regulations to carry out the Act.

Active Government Collaboration

NOAA already has initiated discussions with the Department of Energy, the Maritime Administration, the Coast Guard, and the Environmental Protection Agency concerning implementation of the Act and the respective programs and jurisdictions of the other agencies. NOAA also will discuss matters with the Departments of State (with respect to non-interference with other ocean users, and with other nations) and Justice (with respect to OTEC antitrust issues). NOAA also intends to initiate discussions with components of the Department of the Interior, such as the U.S. Geological Survey and the Bureau of Land Management, in order to benefit from their experience in certain areas where those agencies have faced similar issues. Furthermore, NOAA intends to coordinate with the Small Business Administration in order to assess the potential impact of these regulations on small businesses.

In addition to this coordination with affected Federal agencies, NOAA will contact relevant State (and, as appropriate, local) government officials in potentially affected areas (for example, the Gulf of Mexico area, the U.S. Virgin Islands, Puerto Rico, Hawaii, and the Commonwealth of the Northern Mariana Islands).

Timetable

ANPRM—NOAA may publish one in November/December 1980.

NPRM—March 1981.

Regulatory or Other Analysis—NOAA plans to issue a draft Regulatory Analysis and a draft Environmental Impact Statement (EIS) in March 1981.

Public Hearing—NOAA plans to hold at least one public hearing on the proposed rules and accompanying draft EIS after NOAA issues the NPRM and draft EIS. In addition, NOAA intends to hold public meetings concerning the proposed rules and the draft EIS before

issuing those documents.

Public Comment Period—A 60-day public comment period will follow the NPRM.

Final Rule—July 1981.

Final Rule Effective—August 1981.

Available Documents

A Federal Register notice requesting other Federal agencies having expertise concerning, or jurisdiction over, any aspect of the construction or operation of OTEC facilities and plantships to send NOAA written descriptions of their expertise or statutory responsibilities (45 FR 56857, August 26, 1980).

Notice of Environmental Impact Statement (EIS) scoping meeting (45 FR 63543, September 25, 1980).

As other documents pertaining to this rulemaking and development of the EIS become publicly available, they may be obtained from the Office of Ocean Minerals and Energy, NOAA, Page Building No. 1, Room 410, 2001 Wisconsin Ave. NW., Washington, DC 20235 (Telephone: (202) 653-7695).

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DEPARTMENT OF ENERGY

Conservation and Solar Applications

Commercial and Apartment Conservation Service Program (10 CFR 458 *)

Legal Authority

National Energy Conservation Policy Act (NECPA), P.L. 95-619, 92 Stat. 3206; Energy Security Act (ESA), P.L. 96-294, 794 Stat. 611.

Reason for Including This Entry

The Department of Energy (DOE) believes this rulemaking is important because it will expand the Commercial and Apartment Conservation Service (CACS) program, which now encourages the installation of energy-saving measures and the adoption of energy conserving operation and maintenance practices in small multifamily dwellings. Our rule would expand the CACS program to also cover existing small commercial buildings and large (five or more units) multifamily dwellings. We estimate that the rule will result in savings of 136 million barrels of oil equivalent through the year 2000.

Statement of Problem

The residential and commercial building sectors consume about 36 percent of the Nation's total energy use. In the residential sector, 90 percent of energy usage occurs in single-family homes and multifamily dwellings with less than five units. Promotion of conservation efforts within this sector is covered in the rules adopted by DOE in November 1979, the Residential Conservation Service (RCS) program (part 1, Title II of NECPA). RCS requires approximately 350 larger gas and electric utilities to provide information on energy conservation practices and measures appropriate by building type to their residential customers in one- to four-unit dwellings. RCS also requires covered utilities to offer such customers the opportunity to request various services, including an on-site audit; assistance in arranging for the purchase and installation of recommended conservation and renewable resource measures; lists of suppliers, lenders, and contractors agreeing to conform to RCS Standards and program requirements; the opportunity to include the costs of such installations in monthly utility bills; written one-year manufacturers' and installers' warranties; and access to consumer grievance procedures.

The remaining 10 percent of the energy used by the residential sector is in multifamily dwellings of five or more units, representing 15 percent of the residential sector. Energy saving incentives traditionally have been fewer for residents in such buildings, especially in units which are master metered. In order to help meet the President's buildings weatherization goals by 1999 as contained in the National Energy Plan II, DOE is proposing this rulemaking to cover both multifamily buildings of five or more units and that portion of the commercial sector containing buildings that use less than 1,000 therms of natural gas, 4,000 kilowatt-hours of electricity per month, or combined energy usage of all fuels that is less than the equivalent of 114 million Btu's.

Under both the RCS program and its expansion through CACS in the proposed rulemaking, DOE invites States to submit plans to DOE for approval to administer and enforce utility compliance with State programs. According to § 211 of NECPA, utilities covered by RCS and CACS included all those which during the second preceding year had sales (for purposes other than resale) which 1) exceeded 10 billion cubic feet for natural gas, or 2) exceeded 750 million kilowatt hours of electricity. Participating Governors must decide

whether or not to include non-regulated, municipally owned utilities and interested home heating suppliers in State plans. Non-regulated utilities not included in State plans but meeting the above size criteria must prepare and submit their own plans for DOE approval. NECPA requires DOE to prepare a Federal plan and order covered investor owned utilities to comply with it in cases where no approved State plan exists; in such circumstances non-regulated utilities will prepare and submit plans.

The energy use in the sectors covered by this rulemaking, while smaller than that of single-family homes, is nonetheless very significant in that it represents 30 percent of the energy equivalent of U.S. oil imports. Numerous studies by DOE and others have demonstrated that a major fraction of this energy use could be eliminated by cost effective investments in retrofitting of existing buildings. DOE's objective through the CACS program is to aid small business and apartment owners and tenants to achieve cost-effective energy savings. DOE recognizes that appropriate energy saving information is costly to obtain, and there is much inertia on the part of small business personnel to spend the time and resources needed to secure and analyze such information. Therefore, the Government will play a useful role in requiring covered utilities (and home heating suppliers willing to participate) to make appropriate information available to owners and tenants of applicable buildings.

Unlike RCS, the CACS program is principally an information program, and participation is voluntary for building owners and tenants. The proposed program does not mandate specific actions to save energy except to the extent that it stimulates owners and tenants of commercial and apartment buildings to request the audit and adopt conservation practices and install conservation and renewable resource measures. The success of the program depends largely on the enthusiasm with which covered utilities carry out the intent of the program to encourage customers to both respond to the offer of on-site audits and actually make energy-saving improvements in buildings.

Alternatives Under Consideration

The statute sets specific criteria for expansion of RCS to the commercial building and multifamily dwelling sectors and requires the Secretary to develop regulations to carry out the program. The highly prescriptive nature of the statute leaves relatively little discretion to the Secretary in developing

this proposed rulemaking. However, in some instances, elements of this rulemaking that differ from the RCS regulations are indicative of the choice of alternatives.

In contrast to RCS, the proposed rulemaking requires covered utilities to provide a building energy use monitoring list to building managers and a Tenant's Energy Conservation Information Package to commercial and apartment building tenants once an audit has been requested. The audit requirements in the proposed rulemaking differ from RCS due to the differences in buildings. Unlike the one-to-four-unit residential units covered by RCS, commercial and apartment buildings covered by CACS vary substantially in size, structure, and energy use. Owners of such buildings are mostly business persons, and the measures appropriate to the various structures are diverse, with equipment types varying widely in each category. As a result of these differences, the proposed regulations allow much greater latitude to States and utilities; require utilities to provide fewer services to eligible customers; and include a greater use of estimates based on typical values achieved in similar facilities than do the RCS regulations.

Summary of Benefits

Sectors Affected: Federal Government; State governments; investor-owned and municipally owned electric and gas utilities meeting the sales criteria established in § 211 of NECPA; participating home heating oil suppliers; tenants and owners of eligible commercial buildings and multifamily dwellings of five or more units; and the general public.

All sectors affected will benefit from the energy savings achieved by the program. The Federal Government will benefit from having limited sources of non-renewable fuels extended by the conservation actions of building owners and tenants. DOE estimates that total energy savings resulting from the proposed regulation will be 136 million barrels of oil equivalent through the sectors covered through the year 2000. Building owners' and tenants' benefits will be realized in terms of lower or controlled utility bills and greater personal comfort. Utilities will benefit by avoiding additional capital expenditures for increased generating capacity. Home heating suppliers will preserve good customer relations and may expand their base of operations as a result.

Summary of Costs

Sectors Affected: Federal Government; State governments; investor-owned and municipally owned electric and gas utilities covered by the regulations; participating home heating oil suppliers; tenants and owners of eligible commercial buildings and multifamily dwellings of five or more units; and the general public.

Total cost of the programs are estimated at \$1,026 million (1980 dollars) for the multifamily sector and \$770 million for the commercial sector. The cost of energy saved on a discounted basis is \$11.50 per barrel of oil equivalent for the multifamily sector and \$7.89 for the commercial sector. The cost of developing, implementing, and monitoring the proposed CACS program to 1990 is expected to be \$16 million. State governments will encounter costs for similar activities, including State plan development, implementation, and enforcement. The costs are considerably less than for the same responsibilities under RCS. It is expected that the test cost to States to the year 1990 will be \$52.5 million. Covered utilities will be able to charge eligible customers up to \$15 per dwelling unit for providing the prescribed on-site audit. The method to recover the remainder of such costs will be determined by the rate-making authority in the case of investor-owned utilities and by the utility directly in the case of non-regulated utilities. The statute requires that the utility take into account the customer's ability to pay in determining charges. DOE estimates that the total program costs to utilities to the year 1990 will be \$251.7 million (1980 dollars), while the projected cost to building tenants and owners for the audit and selected building modifications will be \$705.9 million. It should be stressed that the program is entirely voluntary for eligible building owners and tenants.

Related Regulations and Actions

Internal: DOE has or is cooperating in several on-going programs which also provide energy conservation assistance to homeowners. These programs include (1) existing RCS program for single-family residences, (2) Low-Income Weatherization Assistance Program, (3) Energy Extension Service, and (4) State Energy Conservation Grant Program.

External: Existing State laws or regulations.

Active Government Collaboration

DOE will work closely with interested States to prepare, implement, and monitor State Plans for this program.

Timetable

NPRM—November 1980.
 Final Rule—March 1981.
 Regulatory Analysis—Being prepared.

Available Documents

None.

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DOE-CS**Emergency Building Temperature Restrictions (10 CFR Part 490)****Legal Authority**

The Energy Policy and Conservation Act, §§ 201(a) and (b), 42 U.S.C. § 6261(b) *et seq.*

Reason for Including This Entry

This entry is included because of its widespread impact on the non-residential building sector and its importance as a nationwide mandatory conservation measure.

Statement of Problem

The Emergency Building Temperature Restrictions (EBTR) were implemented July 16, 1979, after the President determined that the United States was unable to rely upon imports of crude oil to meet normal demand due to international instability. Worldwide production of crude oil is now at levels below those of the comparable period last year. As the President pointed out in the proclamation extending the Building Temperature Restrictions on April 15, 1980, the United States has had to terminate crude oil imports from Iran and is experiencing increased uncertainty about the level of continued crude oil supplies from other producing countries. Actions by the Soviet Union in Afghanistan and the tensions between Iraq and Iran further increase the threat to the stability of commerce in the Persian Gulf.

United States dependence on insecure crude oil imports, which have rapidly increased in price, has substantially increased our inflation rate and created a major adverse impact on the national economy. Because these effects are likely to be of significant scope and duration, it is necessary to take action

which will help forestall additional shortages.

The Energy Policy and Conservation Act (EPCA) contains provisions permitting the President to develop and submit to Congress standby emergency energy conservation contingency plans. Standby Conservation Plan No. 2, Emergency Building Temperature Restrictions, was transmitted to Congress on March 1, 1979, and approved by both Houses. The plan was implemented by Presidential proclamation on July 16, 1979, due to a severe energy supply disruption caused by events in Iran, and renewed for an additional 9 months on April 15, 1980.

Savings are estimated between 200,000 to 400,000 barrels per day oil equivalent, about 25 percent of which can be translated directly into barrels of oil saved, principally middle distillates. By saving this amount of energy, EBTR may help to alleviate the severity of the continuing energy crisis faced by the Nation. Additionally, EBTR has helped complying building owners and operators to develop new energy-saving modes of building operation.

EBTR accomplishes this goal by generally requiring that thermostats in most nonresidential buildings be set no lower than 78° F. for cooling, no higher than 65° F. for heating, and no higher than 105° F. for general purpose hot water. The regulations also require building temperature setbacks during unoccupied hours.

Alternatives Under Consideration

The EBTR regulations permit any State or political subdivision to submit to the Department of Energy (DOE) for approval a comparable plan which could include temperature limits other than those provided for in the EBTR regulations, in addition to other building energy conservation measures. Such plans have already been approved for New Jersey, Massachusetts, and Houston, Texas.

Section 231 of Title II of the Emergency Energy Conservation Act of 1979 (EECA) (P.L. 96-102, 93 Stat. 757, to be codified at 42 U.S.C. 8501) requires that EBTR must permit a State or political subdivision to include in any comparable plans procedures permitting individual building owners to propose alternative conservation means that will achieve at least as much energy savings in their buildings as would the temperature restrictions plan. DOE has published an amendment to the EBTR regulations bringing them into compliance with this provision of EECA (10 CFR Part 490).

DOE is also considering publication of an amendment which would permit all

building owners or operators to comply with the regulations through alternate plans which would conserve as much energy as would adherence to the temperature restrictions alone. Alternate means would not be restricted to adjustments in heating, ventilating and air-conditioning systems, but might include any changes in the design, construction, or operation of the building such as lighting reduction, insulation, weatherstripping, installation of control systems, hours of operation, etc. This will afford maximum flexibility to building owners and operators and give retailers, restaurateurs, and others the chance to implement strategies which they have indicated may be more appropriate to their particular circumstances. This amendment would be designed to help foster creative and innovative approaches to energy-efficient building operation. Administration of the program would, however, grow more complex and costly, and the alternate plan approach may not be appropriate to short-term emergency implementation of the EBTR regulations as they now exist.

The emphasis of the EBTR program is on voluntary public compliance. Although over 40,000 building inspections have been conducted by DOE and participating States (demonstrating approximately an 80 percent compliance rate), inspectors have concerned themselves primarily with educating the public and assisting building owners in bringing their buildings into compliance, rather than stressing enforcement and punitive action.

Summary of Benefits

Sectors Affected: The general public; and owners, operators, and users of approximately 2.8 million nonresidential buildings, including industrial/manufacturing buildings, schools, restaurants, retail stores, offices, hotel/lodging nonsleeping areas, shopping centers, warehouses, and retail food stores, and excluding the sleeping areas of hotels and other lodging facilities, health care facilities, elementary schools, nursery schools, and day care centers.

Compliance with the EBTR regulations can save an average of 6 percent of total building energy use (with consequent reductions in utility bills), although this figure will naturally vary from building to building.

In estimating potential fuel savings, computer simulations of building energy usage before and after EBTR were used. These building models were based on sensitivity analyses of key characteristics affecting energy savings.

such as infiltration and building HVAC (heating, ventilating, air-conditioning) system type. Building owners and managers will become more conscious of energy conservation.

Summary of Costs

Sectors Affected: DOE; and State energy offices.

The costs of EBTR are primarily administrative. Eight million dollars were expended over the first 9 months of the program to cover grants to States for inspections and public education, and DOE regional and headquarters support. This included funding for program analysis, administrative costs, printing and mailing of program manuals, and operation of a toll-free EBTR information hotline.

Related Regulations and Actions

Internal: The Standby Federal Emergency Energy Conservation Plan (10 CFR Part 477, February 7, 1980) developed under the authority of EECA, contains a building temperature measure similar to EBTR.

External: Some State energy offices are considering the inclusion of building temperature measures in State emergency energy conservation plans being developed to meet the requirements of EECA.

Active Government Collaboration

DOE has been working with over 75 Federal agencies to ensure that all Federal buildings are in compliance with EBTR. The energy conservation directors of each of these agencies have maintained contact with DOE and have inspected any buildings against which public complaints have been lodged. The General Services Administration, Department of Defense, and U.S. Post Office, the three Federal agencies with the largest building populations, are in almost daily contact with DOE regarding EBTR enforcement within their jurisdictions. DOE, with over 122,000 buildings covered by EBTR, has conducted inspections of 64,000 buildings since the program was implemented in July 1979.

Timetable

Final Rule—November 1980.

Available Documents

NPRM—45 FR 35788, May 27, 1980. Emergency Building Temperature Restrictions Regulations, 10 CFR Part 490, July 5, 1979.

"How to Comply with Emergency Building Temperature Restrictions." Copies may be obtained by writing to the Agency Contact listed below or calling the toll-free Emergency

Conservation Service Hotline: (800) 424-9122 or 252-4950 (Washington, DC).

Emergency Building Temperature Restrictions Docket No. CAS-RM-79-109. Transcripts of all public hearings and supporting documents are available for review in the Freedom of Information Office. Correspondence should be addressed to: Milton Jordan, Director, Freedom of Information Office, Department of Energy, 1000 Independence Avenue, S.W., Room 5B-138, Washington, DC 20585.

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DOE-CS

Energy Conservation Program for Consumer Products Other Than Automobiles (10 CFR Part 430*)

Legal Authority

Energy Policy and Conservation Act, Title III, Part B P.L. 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act, P.L. 95-619, 92 Stat. 3257.

Reason for Including This Entry

The Department of Energy (DOE) includes this entry because the proposed rule imposes substantial costs on the home appliance industry, increases the cost of appliances, and involves energy conservation issues of great public interest.

Statement of Problem

Major consumer products now being manufactured are less energy efficient than they could be. DOE's Conservation Program for Consumer Products Other Than Automobiles seeks to reduce energy consumption of major household consumer products. The legal authority establishes 13 product categories for review. These product categories are: refrigerators and refrigerator/freezers, dishwashers, clothes dryers, water heaters, room air conditioners, home heating equipment (not including furnaces), television sets, kitchen ranges and ovens, clothes washers, humidifiers and dehumidifiers, central air conditioners, and furnaces.

The legal authority also allows for a 14th product category for any other type of consumer product classified as a

covered product in accordance with § 322(b) of the Act.

DOE has developed test procedures measuring efficiency levels of products covered by the proposed energy efficiency standards. These standards will establish the minimum level of energy efficiency that the manufacturer of the covered product must achieve, but will not prescribe the methods, designs, processes, or materials to be used to achieve the particular efficiency level. The Energy Policy and Conservation Act (EPCA) further directs that DOE design any standard it issues to achieve the maximum improvement in energy efficiency which is technologically feasible and economically justified. Manufacturers will be required to certify that their products are in conformance with the standards by testing them in accordance with DOE test procedures before they can place such products on the market.

Alternatives Under Consideration

The major alternatives considered for each covered product were labeling, rebates, tax incentives, consumer education, prescriptive standards, voluntary programs, and no regulation.

Each of these alternatives has been evaluated relative to achieving the mandate of Congress, and other related policy objectives.

We considered the alternative of labeling as the primary action of DOE to be inappropriate because Congress has, in the Act, mandated the establishment of a labeling program by the Federal Trade Commission (FTC). FTC's labeling program requires that eight of the 13 covered products be labeled to reflect average annual operating costs or energy efficiency ratings. These costs are based on Federal test procedures developed by DOE.

We determined that the alternative of providing consumer rebates for purchase of more energy efficient products would involve unnecessary expenditure of Federal funds. Since the consumer is the ultimate benefactor with regard to net cost savings resulting from increased energy efficiency, a rebate to the consumer would serve only to further increase the consumer's economic benefit. In addition, a rebate would be provided to consumers who would have purchased more efficient products without further stimulus as well as to those whose behavior would be altered by the incentive. The length of time over which the rebate would be extended was also a factor in rejecting this alternative. A long-term program could be very costly, while a short-term program may not achieve lasting benefits.

DOE also considered the alternative of providing tax incentives for purchasing or manufacturing energy efficient products. Many of the same problems that we anticipated in the rebate alternative are also pertinent to this alternative. In both programs, the majority of the associated costs would be borne by the Federal Government, i.e., distributed among all taxpayers, while the benefits would be derived only by the purchasers of covered products. Thus, on an individual-by-individual basis, the costs would outweigh the benefits for those taxpayers who do not purchase the covered products.

DOE has not rejected the alternative of a consumer or public education program. Rather, DOE believes that a strong, viable education program is an important facet of any approach undertaken to achieve energy efficiency of the covered products. DOE's education program will focus on educating consumers to read energy efficiency labels when purchasing covered products, and on the most energy efficient use of the covered products. The concept of energy efficiency does not only relate to the design of a product, but also to how the product is used. The benefits of a well-designed energy efficient product may be completely lost if users are not aware of how to operate and maintain the product to achieve the desired performance. For example, some refrigerators provide an antisweat heater to use during damp or humid weather. Proper use of the heater will reduce energy consumption of the refrigerator.

Other alternatives that DOE considered include the possibility of prescriptive standards based on specific energy efficient design elements rather than the proposed performance standards. We rejected this approach because of the potential for reducing manufacturers' options to use innovative technology to achieve the energy efficiency requirements.

The original version of the Act (EPCA, P.L. 94-163) called for the industry to set up voluntary energy efficiency targets for the covered products. Congress specifically changed this section when amending the Act to provide for immediate establishment of Federal standards. DOE rejected the voluntary program in order to achieve energy efficient products as rapidly as possible.

The "no regulation" alternative assumes that standards are not implemented for any of the covered products. If DOE chooses this alternative, some energy efficiency improvements would result in the

covered products because of State regulations, and labeling programs, voluntary industry certification, and increasing interest by consumers in energy efficiency as energy costs rise. However, these increases would be much less than the levels that would be obtained with minimum energy efficiency standards. Thus, relative to the proposed standards, this alternative would result in smaller energy savings and reduced progress toward national energy self-sufficiency.

DOE proposes to require industry to meet a prescribed performance standard rather than a specific design standard, leaving the manufacturer free to find the most cost effective means of compliance while maintaining the desired level of overall quality.

Summary of Benefits

Sectors Affected: Manufacturers and users of major household appliances; and the general public.

The improvement of consumer product efficiencies will decrease the amount consumers pay on their monthly utility bills and the overall amount of energy consumed in the Nation. We also expect that implementation of Federal standards will accelerate adoption of high efficiency consumer products by 10 years. Standards will be effective beginning in 1981. All products below the prescribed level of standards will be eliminated. Energy savings are estimated at between 13.4 quadrillion, British thermal units (Btu's) and 24.1 quadrillion Btu's over the period 1982 through 2005. The discounted value of these energy savings will be between \$18.8 and \$24.4 billion, in 1975 dollars. For the year 2000, annual energy savings are expected to be between 0.8 quadrillion Btu's and 1.9 quadrillion Btu's. This translates to energy savings in the range of 376,000 to 993,000 barrels of oil equivalent per day by the year 2000.

Summary of Costs

Sectors Affected: Manufacturing of major household appliances; and users of these appliances.

The costs resulting from implementation of the program will be borne by consumers in the form of increased consumer product prices. This cost over the 1982 through 2005 period is expected to be between \$8.3 and \$11.1 billion in discounted 1975 dollars. However, the overall program will have a positive net present value between \$10.5 and \$13.3 billion.

Adverse impacts will be minimized because we will prescribe separate standards for each category of consumer

products. This allows the Federal Government to maximize benefits while minimizing burdens in a more judicious manner.

Strong, more technologically sophisticated firms are not expected to be severely burdened. The greatest potential for near-term adverse impacts to manufacturers will be for those which produce air conditioning and refrigeration products. The overall competitive effect of standards is expected to be a slight increase in concentration in this 300-firm industry.

Burdens on manufacturers will be kept to a minimum through careful consideration of potential impacts. In addition, firms with sales under \$8 million are allowed exemption from standards for 2 years following promulgation, upon successful petition to the Federal Government.

Related Regulations and Actions

Internal: Energy Performance Standards for New Buildings, Residential Conservation Service Program.

External: Minimum Property Standards for One- and Two-Family Dwellings, Department of Housing and Urban Development.

Federal Trade Commission Appliance Labeling Program.

Active Government Collaboration

Federal Trade Commission and National Bureau of Standards.

Timetable

Final Rule for Nine Products—January 1981.

NPRM for Four Products—March 1981.

Final Rule for Four Products—November 1981.

Available Documents

Draft Regulatory Analysis.

Test Procedures:

Refrigerators, Refrigerator-freezers—42 FR 46140, September 14, 1977.

Freezers—42 FR 46140, September 14, 1977.

Dishwashers—42 FR 39964, August 8, 1977.

Clothes Dryers—42 FR 46140, September 14, 1977; 45 FR 46762, July 10, 1980.

Water Heaters—42 FR 54110, October 4, 1977; 43 FR 48986, October 19, 1978; 44 FR 52632, September 7, 1979.

Room Air Conditioners—42 FR 27896, June 1, 1977; 45 FR 2632, January 11, 1980.

Home Heating Equipment—not including Furnaces, 43 FR 20108, May 10, 1978.

Television Sets—42 FR 46140, September 14, 1977.

Kitchen Ranges and Ovens—42 FR 20106, May 10, 1978.

Clothes Washers—42 FR 49802, September 28, 1977.

Humidifiers and Dehumidifiers—42 FR 55599, October 18, 1977.

Central Air Conditioners, including Heat Pumps—42 FR 60150, November 25, 1977; 44 FR 76700, December 27, 1979.

Furnaces—43 FR 20108, May 10, 1978; 45 FR 53714, August 12, 1980.

NPRM Regarding Provisions for the Waiver of Consumer Product Test Procedures, 45 FR 14188, March 4, 1980.

Sampling Requirements of Consumer Products Test Procedures—44 FR 22410, April 13, 1979.

Public comments (including comments from public hearing held August 1980).

Representative Average Unit Cost of Electricity, Natural Gas, No. 2 Heating Oil, and Propane—44 FR 37534, June 27, 1979.

Standards:

ANPRM Regarding Energy Efficiency Standards for Nine Types of Consumer Products—44 FR 49, January 2, 1979.

ANPRM Regarding Energy Efficiency Standards for Four Types of Consumer Products—44 FR 72276, December 13, 1979.

ANPRM Regarding Energy Efficiency Standards for Heat Pumps—45 FR 5802, January 23, 1980.

NPRM Regarding Energy Efficiency Standards for Nine Types of Consumer Products—45 FR 43976, June 30, 1980.

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DOE-CS

Energy Performance Standards for New Buildings

Legal Authority

Energy Conservation Standards for New Buildings Act of 1976, 42 U.S.C. §§ 6831-6840; Department of Energy Organization Act, § 304, 42 U.S.C. § 7101 *et seq.*

Reason for Including This Entry

This entry is included because it imposes significant costs on the building and residential housing industries, and because it involves energy conservation issues of great public interest.

Statement of Problem

The problem of energy shortages can be addressed by a number of conservation measures. The intent of this regulation is to reduce the amount of energy consumed in new buildings. One-third of all energy consumed in the U.S. is used in buildings. Inefficient building designs and equipment waste about 40 percent of this energy.

The Department of Energy (DOE) is developing design energy consumption budget levels, measured in units of British Thermal Units (Btu's) of design energy consumption per square foot of floor space per year (Btu/sq. ft./yr.). These design energy budgets will take into account the differences in energy consumption required by climate and by different building functions. This regulation will require all new buildings to be designed not to exceed the corresponding energy budget.

Buildings which meet these energy budgets will consume about 45 percent less energy than recently constructed buildings. This will mean aggregate energy savings of 26 quadrillion Btu's through the year 2000, in addition to the other energy saving programs under consideration.

In the NPRM (44 FR 68120, November 28, 1979), Proposed Building Energy Performance Standards are expressed in Btu's per square foot and are multiplied by "weighting factors" to account for the different values of fuels. The measurement of design energy is made using a Standard Evaluation Technique.

Alternatives Under Consideration

(A) Revising the building classification.

(B) Replacing the "Weighting Factors" with dual site budgets.

(C) Adding alternate evaluation techniques to the list of certified evaluation tools.

(D) Adding "certified equivalent energy codes" as an alternative means of complying with the Standard.

Also, an examination of non-regulatory approaches to achieving the Standards has been conducted and is now being refined.

Summary of Benefits

Sectors Affected: The building industry (architectural services, construction, and manufacturing of construction materials); buildings workers (professional, management, skilled, and operative); the building market (realtors, purchasers, and users of buildings); and the general public.

Single family residential buildings designed to comply with the proposed

Standards should use between 22 percent and 51 percent less energy than current practice. Commercial and multifamily residential buildings complying with the standards should use between 17 percent and 52 percent less energy. Economic impacts are small, i.e., at a 10 percent real discount rate (which adjusts for the effects of inflation), the Standards may, by 1991, increase the Gross National Product by 0.1 percent, increase employment by 1.0 percent, and improve the balance of trade by 5 percent. The building industry could benefit by increased demand for their services.

Summary of Costs

Sectors Affected: The building industry (architectural services, construction, and manufacturing of construction materials); the building market (realtors, purchasers, and users of buildings); DOE; HUD; and State and local governments.

As a result of the standards, the cost of new commercial buildings is expected to increase about 2.5 percent. The cost of new residential buildings is estimated to increase \$.75 to \$1.00 per square foot or \$1,200 to \$1,600 for a 1,600 square foot one-story home. The added cost to enforce the Standards varies with the method used to implement the standards, but assuming State and local governments choose to make existing code mechanisms equivalent, we estimate that the enforcement costs for Federal, State, and local governments will be \$55 million.

Related Regulations and Actions

Internal: DOE is developing a Model Building Energy Code which translates the Standards into code language.

External: Minimum Property Standards for One- and Two-Family Dwellings, Department of Housing and Urban Development (HUD); Minimum Property Standards for Multifamily Dwellings; HUD Handbook 4910, Revision 5, April 1977; Proposed Increase in Thermal Insulation Requirements for the Minimum Property Standards for One- and Two-Family Dwellings, 43 FR 17371, April 24, 1978; Farmers Home Administration, Form 424.1; 7 CFR Part 1804, Subpart A, Appendix D, Construction Standards.

Active Government Collaboration

The Department of Housing and Urban Development and National Bureau of Standards are actively involved in the development program.

Timetable

NPRM—August 1981.

Public Comment Period—Will follow

NPRM.

Final Rule—April 1983.

Available Documents

In support of this proposed rule, the Department has developed ten Technical Support Documents. These documents provide detailed information on important aspects of the proposed rule and are referred to throughout the preamble. All documents may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22150, and the Technical Information Center, Oakridge National Laboratory, P.O. Box 62, Oakridge, TN 37830.

Technical Support Document Number	Title	Administrative Record Number
1	The Standard Evaluation Technique	9561.00
2	Statistical Analysis	9562.00
3	Energy Budget Levels Selection	9563.00
4	Weighting Factors	9564.00
5	Standard Building Operating Conditions	9565.00
6	Draft Regulatory Analysis	9566.00
7	Draft Environmental Impact Statement	9567.00
8	Economic Analysis	9568.00
9	Passive & Active Solar Heating Analysis	9569.00
10	Climate Classification Analysis	9570.00

Additional documents are the phase one/base data for the Development of Energy Performance Standards for New Buildings (Final Report, PB-286 898; Climatic Classification, PB-286 900; Data Collection, PB-286 902; Residential Data Collection and Analysis, PB-286 899; Data Analysis, PB-286 901; Building Classification, PB-286 904; and Sample Design, PB-286 903), January 12, 1978.

ANPRM—43 FR 54512, November 21, 1978.

NPRM—44 FR 68120, November 28, 1979.

Draft Final Environmental Impact Statement, Building Energy Performance Standards (DOE, April 1980).

Draft Regulatory Analysis.

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DOE-CS

Federal Price Support Loan Program for Energy from Municipal Waste Resource Recovery Facilities (10 CFR Part 485)

Legal Authority

Energy Security Act (ESA) Title II, Subtitle B, P.L. 96-294.

Reason for Including This Entry

The regulations to be developed by DOE will establish policy and set forth procedures whereby municipalities may submit applications for price support loans for energy produced and sold by municipal waste resource recovery facilities. These regulations are precedent-setting. The regulations will be issued in two phases.

Statement of Problem

In 1980, approximately 156 million tons of municipal solid waste and dry sewage sludge solids are potentially available for energy recovery. Should all these wastes be utilized for energy production, they could produce the equivalent of over 200 million barrels of oil annually.

In addition to municipal solid waste, about 14 million barrels of oil equivalent are potentially recoverable from the 30 million tons of process wastes generated by U.S. industry annually. Also, appreciable amounts of energy can be conserved through waste materials recycling processes. The magnitude of the potential energy production from all facets of wastes indicates that resource recovery systems could make a major contribution to national energy goals.

The proposed rulemaking will provide inducements to recover a substantial portion of the energy potential of solid and industrial process wastes. The initial phase of the regulations (phase 1) will establish the components for setting the amount of price support loans. The main regulations (phase 2) will cover the remaining components of the price support loan program, including procedures for filing applications, criteria for project eligibility and approval, deadlines for filing, etc.

A price support loan program for municipal waste-to-energy systems could encourage projects to go forward that might otherwise be deferred because projected initial project costs resulted in disposal fees that were not competitive with the prevailing costs of landfill at the time the project was initiated. A price support loan affects the operational costs of a plant, having the effect of reducing the disposal fee. Without a price support loan in the early years, a project with a high initial

disposal fee might not go forward despite its economic feasibility when calculated on a life cycle basis.

Alternatives Under Consideration

DOE is considering several options for the application of proposed price support loans. These include support based upon the quality of product, the quantity of product, the unit price received for product, and full or partial purchase of product by the Federal Government.

DOE is also considering other mechanisms for support of municipal solid waste energy recovery projects as specified in the Energy Security Act. These mechanisms include loan guarantees, construction loans, and price guarantees.

Summary of Benefits

Sectors Affected: Municipalities, counties, and special authorities (State and local); private industries in the role of energy buyers, waste disposers or project developers; investor-owned and municipally-owned utilities and their customers; investment banking companies and financial underwriters; waste processing equipment and systems manufacturers, and wholesale and retail traders; project engineering consultants; consumers of petroleum products; and the general public.

This regulation will significantly accelerate municipal waste reprocessing. Although these technologies may be economically marginal today, on a life-cycle basis they are attractive and will reduce our vulnerability to petroleum supply disruptions.

The proposed regulation will tend to reduce costs and prices of end products from municipal waste reprocessing facilities for individual levels of government, industries, and regions. In addition to contributing to the displacement of a significant amount of fossil fuels, primarily oil, this regulation also has the effect of creating both construction and permanent jobs. The facilities assisted under this price support program will also divert municipal wastes from landfills and reduce the volume for ultimate disposal by communities by 85 to 95 percent. Pollution of ground, water, and air will be significantly reduced.

Summary of Costs

Sectors Affected: The Federal Government.

The total Federal assistance available under this program is \$160 million. Existing facilities may apply for a 5-year price support loan; new projects may

apply for a 7-year loan. No payment can be based on a unit value of support greater than \$2.00 per thousand Btu's (MBtu) of energy produced and sold. Beginning in the second year, the amount of the loan declines in each succeeding year, to zero at the end of the 5- or 7-year loan term. For example, with a 7-year loan, the payment in year 2 would equal the per unit value multiplied by $\frac{1}{2}$; in year 3 the proportion declines to $\frac{1}{3}$; etc. Repayment begins in year 8.

Related Regulations and Actions

Internal: Urban Waste Demonstration Facilities Guarantee Program (10 CFR 495).

Municipal Waste Reprocessing Demonstration Program Facilities Evaluation and Assessment Guidelines (10 CFR 492).

Loan Guarantee for Alcohol Fuels Biomass Energy and Municipal Waste Energy Programs (10 CFR Part 799), Proposed August 19, 1980.

External: None.

Active Government Collaboration

Environmental Protection Agency; Department of Commerce.

Timetable

NPRM (Phase 2)—November 1980.

Public Comment Period (Phase 1)—November/December 1980.

Final Rule (Phase 1 and 2)—January/February 1981.

Available Documents

NPRM (Phase 1)—45 FR 63822, September 25, 1980.

Public comments (Phase 1 public comment period was September/October 1980) and comments from Phase 1 public hearing (October 14, 1980) are available from Agency Contact.

Environmental Assessment, July 19, 1979; this document can be obtained from Room 1F-059, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 252-9397.

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DOE-CS

Standby Federal Emergency Conservation Plan (10 CFR 477)

Legal Authority

The Emergency Energy Conservation Act of 1979, Title II, P.L. 96-102, 93 Stat. 757, to be codified at 42 U.S.C. § 8501.

Reason for Including This Entry

The Department of Energy (DOE) issues this rule to conform to the requirements of the Emergency Energy Conservation Act of 1979 (EECA). The Standby Federal Emergency Energy Conservation Plan (the Federal Plan) is one element in the framework provided by EECA for a coordinated national response to a severe energy supply interruption.

State of Problem

Serious disruptions due to continued high dependence on insecure crude oil imports have occurred recently in the gasoline and diesel fuel markets of the United States. Because it is likely that such disruptions could recur, and urgent need exists for Federal, State, and local governments to establish emergency energy conservation measures for gasoline, diesel fuel, home heating oil (middle distillates), and other energy sources which may be in scarce supply.

The EECA, passed by Congress on November 5, 1979, provides the framework for national, statewide, and local responses to serve energy supply disruptions. Under the terms of the Act, if the President finds that a "severe energy supply interruption" exists or is imminent, or that actions are necessary to restrain domestic energy demand under the terms of international energy agreements, he may establish emergency energy conservation targets for the Nation generally, and for each affected energy source (e.g., gasoline). Within 45 days from the publication of the targets, the Act requires States to submit to DOE emergency conservation plans containing measures designed to meet or exceed the energy savings targeted by the President. Section 213 of the Act requires that DOE establish a Standby Federal Emergency Energy Conservation Plan containing measures designed to reduce the consumption of targeted energy sources. If, after a period of not less than 90 days, a State is not substantially meeting its target, and a shortage of 8 percent or greater of the targeted energy source will persist for an additional 60 days, the President may impose upon the State all or a portion of the measures contained in the Federal Plan.

Because the transportation sector accounts for almost one-half of the Nation's petroleum consumption, and the greatest potential for fuel savings within this sector is related to the use of passenger automobiles, DOE gave primary emphasis in the Federal Plan to measures which are designed to reduce the demand for gasoline and other motor fuels. However, DOE included one non-motor fuel measure (mandatory building temperature restrictions) because it has already demonstrated the potential for savings of 200,000 to 400,000 barrels per day of oil equivalent.

Several of the measures referred to above are interim final rules, while others are proposed rules. Included in the interim final rules are:

1. Public information measures, intended to inform motorists about fuel conservation actions they can take, including efficient operation and maintenance of vehicles, alternative means of travel, and trip planning. Additionally, the rules require gasoline station owners to have available working air pumps and tire pressure gauges and informative, prominently displayed signs regarding the energy efficiency of proper tire pressure;

2. Minimum automobile fuel purchase restrictions, which set forth restrictions on any minimum gasoline purchase scheme implemented under Federal authority (i.e., the minimum amount of gasoline which may be purchased for a vehicle with 8 or more cylinders shall be \$7.00, and for vehicles with fewer than 8 cylinders, the minimum amount shall be \$5.00);

3. Odd-even motor fuel purchase restrictions, which set forth restrictions on any odd-even gasoline purchase program adopted by the Federal Government;

4. Portions of the employer-based commuter and travel measure, which requires private and public employers of a certain size to undertake measures to encourage the use of energy-efficient modes of transportation by their employees in commuting to work;

5. Speed limit enforcement measures, which require States to increase immediately the compliance level for the 55 mph speed limit, and take additional steps to reduce speed limits depending on the severity of the shortage.

6. Mandatory temperature restrictions, which prescribe thermostat levels for heating, cooling, and hot water in most nonresidential buildings.

Included as proposed rules are:

1. Portions of the employer-based commuter and travel measure, including employer subsidization of employees' cost for mass transit, and "work-at-home" arrangements;

2. The compressed workweek measure, requiring all but exempted Government and business activities to reduce their work week by one day; and

3. The vehicle use sticker measure, which prohibits the operation of certain motor vehicles on either one, two, or three preselected days of the week.

Most of the measures are much more intricate than can be captured in this brief analysis. DOE suggests the Federal Plan be read in order to gain a better appreciation of each measure. In addition to the demand reduction measures, the Federal Plan also contains a section which describes the contents, review, and approval of State emergency conservation plans.

Alternatives Under Consideration

The Act requires that DOE develop emergency conservation measures designed to reduce the public and private demand for certain fuels in the event of an energy supply emergency. The legislation also establishes criteria to judge the suitability of various measures for inclusion in the Plan.

Demand reduction measures may be implemented by Federal, State, or local government officials. Measures may be voluntary or mandatory, designed to achieve three goals: a reduction in energy use through a reduction in product or service output; improvements in efficiency which will reduce the energy required for the same output; and switching from a fuel in short supply to one that is more abundant.

DOE employed a systematic process in selecting demand restraint measures for inclusion in the Federal Plan. First, we analyzed the specific characteristics of U.S. energy demand in order to ascertain which sectors were likely to experience the most severe impact of an energy supply interruption. Next, we analyzed past shortages and devised demand restraint measures to meet a probable future shortage. We reviewed existing literature and surveyed the measures already in operation in various States to develop a catalogue of measures for inclusion in the Federal plan. Finally, we subjected these measures to an increasingly rigorous review to eliminate those which conflicted with statutory requirements. Other reasons for eliminating measures included their relatively minor energy savings, or their perceived unacceptable impacts on public health, the national economy, and the environment. However, some measures not selected for inclusion within the Federal Plan may well be appropriate for inclusion in State plans in States where they could result in significant energy savings and

could be readily enforced. Examples of these measures are:

1. school schedule modification;
2. electricity end-user measures;
3. electric utility conservation measures;
4. commercial and industrial boiler efficiency improvements;
5. industrial and utility fuel switching;
6. reductions of lighting energy use; and
7. building insulation and weatherization measures.

Because the transportation sector accounts for nearly one-half of the Nation's average daily consumption of petroleum products, we targeted this sector for concentration in the Federal Plan. The greatest potential for fuel savings in transportation exists in the use of gasoline in passenger automobiles, which now account for more than 50 percent of all transportation energy consumption. For these reasons, all but one of the measures contained in the Federal Plan address the consumption of gasoline and motor fuels.

Summary of Benefits

Sectors Affected: All sectors of the economy, particularly transportation related industries; and the general public.

The benefits accruing from the Federal Plan are difficult to measure because it is a standby plan. We will implement it only after the States have been given an opportunity to develop and administer their own emergency conservation plans. The State plans may include elements of the Federal Plan. Publication of the interim final rule in February, 1980 has sparked an intense debate at all levels of government and the private sector as to the efficacy of various emergency conservation measures. It is clearly in the national interest that a standby plan be prepared so that our Nation will be able to respond within a coordinated framework to a severe energy supply interruption.

The average daily demand for gasoline in 1979 was just over 7 million barrels per day (BPD). Estimated energy savings (primarily gasoline) for the measures contained in the Federal Plan are:

Measure	Estimated reduction (in thousand BPD)
Public information	70-200
Minimum fuel purchase restrictions	Unknown
Odd-even purchase restrictions	Unknown
Employer-based commuting	55

Measure	Estimated reduction (in thousand BPD)
Speed limit (the range indicated depends on the degree of enforcement and designated speed limits)	30-400
Compressed workweek	300
Building temperature restrictions (measured in barrels/oil equivalent)	200-400
Vehicle-use sticker (the range indicated depends on the number of non-driving days from 1 to 3)	265-1,350

Summary of Costs

Sectors Affected: All sectors of the economy, particularly transportation-related industries; and Federal and State government.

The actual costs associated with this plan depend on the extent of the energy shortfall, how long the shortfall lasts, and which of the standby measures are actually implemented. Implementation costs will be borne by all units of government as well as by the private sector. To give an indication of how much it might cost to implement portions of the standby plan in an energy shortfall, consider the following example. A minimal program to reduce gasoline consumption by 8 to 10 percent could include the public information, employer-based commuting, and 55 mph speed limit enforcement measures. We estimate that the costs to the Federal Government of implementing these three measures would total roughly \$100 million.

Under the public information measure, gasoline station owners will be required to have available tire pressure gauges and operating tire pumps. According to the employer-based commuter and travel measure, employers over a certain size will be required to develop for each affected worksite a program to reduce work-related travel by employees. It should be emphasized that these substantial costs are incurred only in the event of an energy shortfall.

Administrative costs associated with developing State standby plans will total about \$10 million.

Related Regulations and Actions

Internal: On July 16, 1979, the Emergency Building Temperature Restrictions became effective. The regulations, which prescribe heating and cooling limits for most nonresidential buildings, were extended until January 16, 1981 by Presidential Proclamation on April 15, 1980.

External: Many State Energy Offices have begun to design emergency conservation plans. We are encouraging States to submit plans to DOE prior to

the actual publication of mandatory emergency conservation targets.

Active Government Collaboration

An interagency task force has been created to ensure that effective input from all Federal agencies is heard in the development of the Federal Plan. Included on this task force are representatives from the Departments of Defense, Labor, Agriculture, Health and Human Services, Transportation, and Commerce; the General Services Administration; and the Postal Service.

Timetable

Final Rule—DOE expects to publish the Final Rule in December 1980. The Final Rule may incorporate both the interim and the proposed rules.

Regulatory Analysis—will accompany Final Rule.

Available Documents

Standby Federal Emergency Energy Conservation Plan—Interim Final and Proposed Rules (10 CFR 477), published February 7, 1980.

Standby Federal Emergency Energy Conservation Plan Docket CAS-RM-79-507. Transcripts of all public hearings and supporting documents are available for review in the Freedom of Information Office. Correspondence should be addressed to: Milton Jordan, Director, Freedom of Information Office, Department of Energy, 1000 Independence Avenue, S.W., Room 5B-138, Washington, DC 20585.

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DOE-Economic Regulatory Administration

Amendments to Puerto Rican Naphtha Entitlements Regulations

(10 CFR Parts 211* and 212*)

Legal Authority

Emergency Petroleum Allocation Act of 1973, as amended 15 U.S.C. § 751 *et seq.*

Reason for Including This Entry

The regulation could have a significant impact on the competitive

position of the Puerto Rican petrochemical industry in relation to its main competitors, the petrochemical producers on the United States mainland. Additionally, any increased entitlement benefits to this segment of the industry would result in corresponding increased crude oil costs to the domestic refining industry.

Statement of Problem

During the 1950s and 60s the Federal Government and the Puerto Rican government encouraged the development of a refining and petrochemical industry in Puerto Rico. Commonwealth Oil Refining Company (CORCO), Phillips, Sun, and Union Carbide were among the major firms that invested large amounts of capital in refinery facilities, based on the tax relief afforded by the Puerto Rican government and the allocation of substantial quantities of low cost foreign crude oil and naphtha (a volatile, colorless, distillate product between gasoline and refined oil) by the Federal Government. Both naphtha and crude oil are "feed-stocks" convertible into one or more end products in the process of refinery operations and petrochemical production.

Two major considerations governed the joint policy of the Puerto Rican and the Federal governments towards the establishment of this refining capacity. First, the policy was based on the availability of low-cost imported feedstock, particularly naphtha, which provided a cost advantage over petrochemical producers on the mainland. This advantage was needed to offset the higher shipping and other costs of starting up the industry in the relatively underdeveloped economy of Puerto Rico. A second major consideration was that the new refinery facilities would expand employment and provide Puerto Rico with fuel for manufacture, transportation, and agriculture.

Since the 1960s, the petrochemical industry in Puerto Rico has grown to such an extent that it now contributes greatly to U.S. petrochemical capacity and to the economy of Puerto Rico. In 1977, petroleum-related industry in Puerto Rico contributed more than \$2 billion to the island's economy, approximately one-third of its total income. In addition, 10 percent of U.S. petrochemical output is now located in Puerto Rico.

Despite these gains, Puerto Rican oil refineries have been severely affected by the world-wide increase in the price of imported crude oil, coupled with the imposition of price controls on domestic crude oil by the Federal Government.

The combination of soaring prices for imported naphtha and crude oil, coupled with Federal regulatory policy which enabled mainland refiners to purchase cheaper domestic crude oil, has reversed the feedstock cost advantage that the Puerto Rican petrochemical industry formerly enjoyed. Mainland competitors now pay less for feedstocks than Puerto Rican refiners.

To lessen the competitive disadvantage to Puerto Rican companies of higher feedstock costs, the Federal Energy Administration (FEA) amended the entitlements program on July 20, 1976, to permit Puerto Rican petrochemical producers to receive entitlement benefits for imported naphtha feedstocks. (An "entitlement" is a credit given by DOE to a refiner, and is equivalent to the difference between the average (volume weighted) delivered cost per barrel of uncontrolled crude oil and the average (volume weighted) delivered cost per barrel of domestic price-controlled crude oil.) The maximum value of the per-barrel naphtha entitlement for any month cannot exceed the value of a single crude oil runs credit. Entitlement obligations are imposed on domestic price controlled crudes so as to raise their cost to that of comparable decontrolled crude oils. Each refiner receives a runs credit for every barrel of crude oil processed, which is the uniform distribution of entitlement monies collected. The entitlement credit, used in this manner, would reduce the price of purchased feedstocks. FEA determined that it would be inappropriate to grant the full crude oil entitlement benefit to naphtha imports in months when the differential between the prices of imported and domestic naphtha is less than that month's per-barrel crude oil runs credit. Accordingly, the rules the FEA adopted tie the entitlement credit for naphtha imported into Puerto Rico to the difference between the average (volume weighted) cost for imported naphtha and an imputed domestic naphtha price, divided by a modified crude oil runs credit (See § 211.67(d)(5)(iii)). This imputed value is set at 108 percent of the average (volume weighted) cost of crude oil to refiners. (It is necessary for the Government to impute this price because very little naphtha is sold domestically.)

These rules are now the responsibility of the Department of Energy (DOE), and are administered by the Economic Regulatory Administration (ERA) within DOE. DOE believes that two factors in the current regulations are causing problems: (1) the naphtha entitlement

value is limited to a crude oil entitlement runs credit, and (2) the factor used to impute the domestic naphtha price is too low. FEA never expected that it would need to grant more than a full crude oil runs credit, since world naphtha prices historically have paralleled crude oil prices. However, during the last year, the prices for imported naphtha have increased much faster than those for crude oil. Further, ERA's review of current data on naphtha prices and crude oil costs show that the factor presently used to impute the domestic naphtha cost is much too low. As a result of these factors, approximate feedstock costs equalization of Puerto Rican petrochemical producers with their U.S. mainland competitors has not been achieved under the existing regulations.

In recognition of the problems facing the petrochemical industry in Puerto Rico, DOE's Office of Hearings and Appeals (OHA) has provided exceptional relief to two of the three petrochemical companies in Puerto Rico that import naphtha. This interim relief was given in order to provide the Economic Regulatory Administration (ERA) with sufficient time to address these issues through the rulemaking process. One firm has been granted relief that allows it to earn two entitlement runs credits for each barrel of imported naphtha run in its petrochemical plant, and the second firm is eligible for increased entitlements for each barrel of imported naphtha processed in excess of a certain monthly level.

Alternatives Under Consideration

DOE will consider several options for better calculating the imputed cost of domestically produced naphtha. The cost of naphtha to the mainland domestic petrochemical industry is a central issue in determining the appropriate level of price protection that should be afforded through the entitlement program to maintain a competitive petrochemical industry in Puerto Rico. These Puerto Rican producers find it difficult to compete with mainland domestic firms because the mainland firms have access to naphtha produced from lower cost domestic crude oils.

The possible approaches to imputing a domestic naphtha price that we are examining include:

- Retaining the current program of imputing a price based on domestic crude oils.
- Adopting a means of imputing the value of domestic naphtha based on its value as a major component in the motor gasoline pool.

- Calculating an imputed price for domestic naphtha by subtracting a fixed cost adjustment from the wholesale price of unleaded regular gasoline. The fixed cost adjustment would be derived by comparing wholesale gasoline and imputed naphtha prices (calculated according to the formula in the above alternative) during a recent 12-month reference period.

- Retaining the current approach of imputing a price based on domestic crude oils, but periodically changing the factor to reflect changes in world market naphtha prices.

In addition to examining changes in the ways of calculating the imputed cost of domestically produced naphtha, DOE has proposed increasing the maximum naphtha entitlement benefit to two run credits, rather than the single runs credit ceiling which currently applies.

Summary of Benefits

Sectors Affected: Puerto Rican petrochemical industry and economy; and users of naphtha derived petrochemicals.

Any of the alternative proposals should increase the competitive position of the Puerto Rican petrochemical industry with petrochemical producers located on the mainland. The Puerto Rican petrochemical industry maintains that if no regulatory changes are made to equalize their naphtha feedstock costs with those of firms operating on the Gulf Coast, they will be forced either to seriously trim their operations or incur large operating losses. In fact, one major Puerto Rican petrochemical plant has already closed. As we formerly stated, the development of refining and petrochemical facilities has had a great impact upon the economy of Puerto Rico. Thus, the proposed changes, in making the Puerto Rican petrochemical industry more competitive, would have a direct positive effect on Puerto Rico's economy.

The proposal should reduce the costs of naphtha-derived petrochemicals to U.S. consumers by a small amount.

Summary of Costs

Sectors Affected: Domestic petroleum refining industry; and U.S. consumers of petroleum products.

None of the proposed changes to the Entitlement Program will increase ERA's compliance or administrative costs. There will be no added reporting requirements for the petroleum industry. However, by allowing naphtha feedstocks imported into Puerto Rico to earn increased entitlement benefits, credits available to domestic refiners of crude oil are reduced. This would

increase the cost of crude feedstock to domestic refiners and, in turn, this could result in a small price increase in oil products to U.S. consumers.

An increased naphtha entitlement value might also have the adverse effect of increasing the price of naphtha in the world marketplace.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

Final Rule—December 1980.

Final Rule Effective—30 days after it is issued.

Available Documents

NPRM—45 FR 59818, August 28, 1980.

Draft Regulatory Analysis, September 4, 1980.

Public comments (public comment period ended November 10, 1980).

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DOE-ERA

Crude Oil Resales Pricing Revisions (10 CFR Parts 211* and 212*)

Legal Authority

Emergency Petroleum Allocation Act of 1973, as amended, 15 U.S.C. § 751 *et seq.*

Reason for Including This Entry

Apparent violations of price regulations by companies buying and reselling crude oil have received considerable attention from the media and the Congress. At the same time, members of the crude oil reselling industry have complained of inequities and ambiguities in the regulations affecting them.

Statement of Problem

With the exception of the group of resellers who entered into business after December 1977 (Class C), who are allowed a uniform maximum markup of 20 cents per barrel in accordance with a rulemaking issued July 29, 1980, firms are limited to the profit or loss experienced in a base reference period. Companies in existence in May 1973 (Class A) may earn the net (except for income taxes) per-barrel markup they earned in the month of May 1973.

Companies beginning business after May 1973 and before December 1977 (Class B) may earn the net per-barrel markup they earned in November 1977. With each Class A and Class B company setting its own Permissible Average Markup on the basis of sales in a particular month, one company earning an average of a few cents a barrel might be in violation, while another earning perhaps 50 cents per barrel might be in compliance. Average markups for the industry in recent years have been in the order of 9 cents to 14 cents per barrel.

A price-control system which allows a profit on each transaction is likely to encourage superfluous transactions. Investigations show that numerous "paper transactions" have been inserted in crude oil supply chains in order to lower average markups into compliance with the regulations.

Alternatives Under Consideration

Various uniform Permissible Average Markups ranging from 1 cent to 25 cents per barrel were proposed in an NPRM (October 1979). Comments were requested on the alternatives.

A Permissible Average Markup of 20 cents per barrel was proposed. This alternative would be consistent with the currently regulatory scheme and would not require extensive revisions to the regulatory structure in the short period remaining for price controls, which will expire September 30, 1981. Thus, it would be less burdensome on the industry and would not require changes in industry practices. It would also be consistent with the 20 cent markup currently in effect for Class C resellers and would provide equitable treatment for all resellers. The allowable markup for Class C resellers is presently above the median average markup of 12-13 cents per barrel for Class A resellers in May 1973, where 99 percent of crude oil was resold at average markups of less than 20 cents per barrel. Therefore, we conclude that a 20-cent-per-barrel markup for Class A and Class B resellers to match Class C markups would be fair and compare favorably with historical average markups.

As an alternative to establishing a maximum average permissible cents-per-barrel markup, we have also proposed a maximum markup for each transaction. In addition, we proposed a low markup or no markup at all for transactions in which the reseller neither transported nor received crude oil into his storage facilities.

We have also proposed an alternative base period for Class B resellers which had no sales in November 1977. If a reseller came into business between

May 1973 and November 1977, it would calculate its allowable permissible markup on the basis of November 1977 sales. If such a reseller had no sales in that month, there is no basis on which it would know whether it is in compliance with the regulations and no effective way they could be enforced against him. DOE's Economic Regulatory Administration (ERA) has proposed the last month prior to November 1977 in which the reseller sold crude oil as a substitute base period. This rule will be retroactive and will apply until uniform markups are specified by ERA.

Summary of Benefits

Sectors Affected: Crude oil wholesalers; petroleum refiners; and consumers of petroleum products.

Under the present regulations, each reseller of crude oil—except post-November 1977 firms affected by the amendment adopted on July 29, 1980—has its own individual price limitation. The complexity and inequity of this type of price control probably contributes to violations and makes enforcement difficult. Changing to a uniform markup limitation for all resellers will bring the benefits of clarity, simplicity, equity, and increased competition to the reseller industry. If competition allows, some crude oil resellers would increase profits. For buyers of crude oil and for ultimate consumers of petroleum products, there will be benefits if violations are reduced.

Administrative and enforcement costs to the Department of Energy will be lowered under a uniform markup regulation.

Summary of Costs

Sectors Affected: Crude oil resellers.

While adoption of a standard average permissible markup for all firms would allow some crude oil resellers to increase profits, others would bear costs if DOE requires them to reduce markups. However, under a 20-cent-per-barrel average allowable markup, probably markup increases by resellers constrained by the current regulations would be approximately matched by reductions by resellers with markups above 20 cents per barrel. The reason is that in the current moderately competitive market, few resellers realize their legal maximum net markup month after month.

In a fully competitive market, crude reseller price regulations would have little impact.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

Final Regulatory Analysis—Fourth Quarter 1980.

Final Rule—December 1980.

Available Documents

NPRM—44 FR 62848, October 31, 1979.

Transcript of public hearings held December 6, 12, and 13, 1979.

Public comments on above NPRM.

Draft Regulatory Analysis.

ERA Docket No. ERA-R-79-48.

All documents are available in the DOE Freedom of Information Reading Room, Forrestal Building, Room 5B-180, 1000 Independence Avenue, S.W., Washington, DC 20585.

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DOE-ERA

Domestic Crude Oil Entitlements (10 CFR 211.67*)

Legal Authority

Emergency Petroleum Allocation Act of 1973, as amended, 15 U.S.C. § 751 *et seq.*

Reason for Including This Entry

This proposal has a significant economic effect; it would distribute the benefits of access to price controlled crude oil more equitably by reducing the post-entitlement cost differences between price-controlled (except Alaska North Slope controlled crude oil) and equivalent uncontrolled domestic crudes in Production Allocation for Defense Districts (PADDs) I-IV and PADD V. This would reduce the competitive advantage of refiners with access to above average proportions of controlled crudes in PADDs I-IV. This proposal would reduce the approximate \$170 million cost advantage to refiners from refining controlled crudes in PADDs I-IV and reduce the approximate \$45 million cost disadvantage to refiners for refining controlled crudes in PADD V.

Statement of Problem

The net cost of crude oil to a refiner is its delivered cost plus any entitlement obligation, less the runs credit. Entitlement obligations are imposed on price controlled crudes so as to raise their cost to that of comparable exempt

crudes. The runs credit is a uniform distribution of the money collected under the obligation and is applied to every barrel of crude oil processed by refiners in the United States.

The entitlements program is designed to equitably distribute the benefits of access to price-controlled crude oil. This is fully accomplished when the net costs of comparable price controlled and exempt crudes are equal. When first adopted in 1974, the entitlement program approximately equalized these net costs. Changes in relative market values of crude, due to restrictions on sulfur content in refined products, the reduced consumption of fuel oils, and foreign crude pricing and supply, no longer permit the equalization of net costs under the system adopted in 1974.

The net costs of controlled crudes have differed from the net costs of equivalent exempt domestic crudes, which are the most comparable to the price-controlled crudes. For example, in January 1980 the net cost of controlled crude was \$6 to \$9 less than that of equivalent exempt crudes in PADDs I-IV, and \$2 and \$4 more than the exempt crudes in PADD V. These differences had changed to \$3 to \$6 and \$5 to \$7 respectively by June 1980. In PADDs I-IV (essentially all of the United States east of the West Coast), the price controlled crudes had a total net cost approximately \$170 million less than the net cost of an equivalent volume of exempt domestic crudes in that region. In PADD V (essentially the West Coast), the controlled crudes had a total net cost of approximately \$45 million more than a comparable volume of exempt crudes in that region. These net costs differences are a measure of the degree to which the entitlements program does not accomplish equitable distribution of the benefits of access to price controlled crude oil.

Alternatives Under Consideration

We are developing a proposal to establish separate entitlement obligations for controlled crudes refined in PADD V and for those refined in PADDs I-IV. These separate obligations would equalize average controlled crude oil costs with average exempt domestic crude oil costs in each region, and achieve equitable distribution of the benefits of access to price-controlled crude oil.

In addition to the regional program, we are developing a proposed adjustment to the entitlement obligations in PADDs I-IV which would compensate for the price differences in high and low sulfur content crudes.

We are also considering taking no action at this time. Crude oil prices have

recently declined, and these net cost disparities may be essentially removed by market actions. The traditional crude oil market, in which prices reflected differences in quality and location, may be restored. In that case, the domestic price disparities other than in PADD V would be essentially eliminated without changes to the entitlements program. Decontrol of price-controlled crude oil is also eliminating the impact of the disparity.

Summary of Benefits

Sectors Affected: Crude oil refiners; and marketers and consumers of petroleum products.

Refiners with below proportions of controlled crudes in PADDs I-IV and refiners of California, Nevada, Arizona, and Southern Alaska crudes in PADD V would obtain lower costs. Some marketers of products refined by these refiners may obtain lower costs, but the entire cost difference may not be passed on to these marketers as some refiners may not reduce selling prices. Similarly, reductions in costs to marketers may not be passed on to consumers.

Summary of Costs

Sectors Affected: Crude oil refiners; and marketers and consumers of petroleum products.

As the entitlements program redistributes costs among refiners, those firms that do not receive benefits incur costs equal to the total benefits. Therefore, all refiners other than those in the benefiting group would incur added costs. If market conditions allow, some of these added costs may be reflected in increased costs to marketers who in turn may increase prices to consumers.

The proposals do not require significant changes in data collection, reporting, or computation and should not impose any significant added administrative or enforcement burden on DOE or refiners.

Related Regulations and Actions

Internal: None.

External: None.

Active Government Collaboration

None.

Timetable

Public Comment Period—60 days following publication of NPRM.
Final Rule—January, 1981.

Available Documents

Regulatory Analysis—With NPRM.
NPRM—

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DOE-ERA

Gasohol Marketing Regulations (10 CFR Parts 211* and 212*)

Legal Authority

Emergency Petroleum Allocation Act of 1973, as amended 15 U.S.C. § 751 *et seq.*

Reason for Including This Entry

The Department of Energy (DOE) believes that amendments to the motor gasoline allocation and price regulations may be necessary to clarify the rights and responsibilities of refiners and marketers that enter the gasohol market. The amendments also are significant because of the degree of public interest in the further development of gasohol.

Statement of Problem

Gasoline supplies can be stretched further if increased use is made of gasohol, which is a blend of ethanol (a kind of alcohol) and unleaded gasoline. Because the ethanol in gasohol can be produced from domestic resources such as grain, the President has set increased use of gasohol as a national goal. This would reduce our dependence on foreign oil.

Existing Federal regulations on the allocation of motor gasoline control the distribution of gasoline in the United States. Price regulations control the methods by which (1) refiners allocate costs to gasoline in total and to individual grades of gasoline, and (2) marketers set selling prices for petroleum products. Unless these rules are appropriate to the growth of the gasohol market, it will be difficult for new and existing businesses to plan production and distribution of gasohol. Therefore, DOE is considering amendments to the regulations which will clarify the criteria under which DOE will assign supplies of unleaded gasoline to blenders for gasohol production, clarify the responsibilities of gasohol producers in marketing gasohol pursuant to the regulations, and amend the methods by which refiners must allocate ethanol costs and marketers set prices for gasohol.

The current regulations do not specify criteria to be employed or procedures to

be followed to assign unleaded gasoline to potential blenders. The only recourse under the current regulations is to apply for an exception through DOE's Office of Hearings and Appeals (OHA). As the gasohol market grows, this approach may be an inappropriate device to deal with increasing numbers of applications by prospective gasohol blenders. Furthermore, unless the allocation regulations were amended, gasohol marketers would have to assume that gasohol would have to be allocated by applying the regulations to the unleaded gasoline which constitutes 90 percent of the gasohol blend. This, however, may be entirely inappropriate to the development of a strong and viable market for this product. Finally, application of the current refiner price rules to gasohol requires that the refiners allocate ethanol costs among all barrels of a grade of gasoline (e.g., unleaded regular gasoline). To the extent that the costs associated with blending and marketing gasohol must be attributed to other grades of gasoline and cannot be recovered in the price of gasohol alone, a disincentive exists for refiners to enter the gasohol market. Correction of these problems would supplement the strong position previously taken by DOE in support of the development of gasohol.

Alternatives Under Consideration

(A) DOE could do nothing at this time, in which case the Office of Hearings and Appeals would still provide an avenue of relief for firms entering the gasohol market. But there are major disadvantages in inaction, including continued uncertainty over rules applicable to gasohol, possible unleaded gasoline supply dislocation, and a possibly unmanageable caseload for OHA.

(B) Deregulation of gasohol must be considered as an alternative, since price and allocation controls on motor gasoline will expire on September 30, 1981. This would allow gasohol blenders and marketers to compete in the market for the unleaded gasoline blend stocks they need to mix with ethanol and would not require a large bureaucracy to implement. However, deregulation of unleaded gasoline for gasohol blending suggests enforcement problems with other unleaded gasoline continuing under controls.

(C) DOE could amend the allocation and price regulations to provide for an appropriate passthrough of ethanol costs to gasohol, specify the criteria by which DOE will assign supplies of unleaded gasoline to a potential gasohol marketer, and create new provisions for the

allocation of gasohol within a refiner's system.

Summary of Benefits

Sectors Affected: Gasohol refiners, ethanol producers, gasohol marketers, retailers, and users; and the general public.

Allocation of unleaded gasoline for blending with ethanol to produce gasohol could provide a regulatory framework within which ethanol fuel production could increase, perhaps from the present 60 million gallons per year to as much as 300 million gallons per year by 1982. Gasohol use may eventually reach 3 billion gallons per year, or 3 percent of present gasoline consumption, as a result of this and other measures. In addition, use of gasohol would also reduce dependence on foreign oil (see the Report of the Alcohol Fuels Policy Review, DOE, June 1979).

Summary of Costs

Sectors Affected: Refiners which manufacture unleaded gasoline; resellers and retailers marketing those refiners' unleaded gasoline production; ethanol producers; and gasohol consumers in some areas.

Allocation of unleaded gasoline to gasohol blenders reduces the amount of unleaded gasoline available to other distributors. Because we expect ethanol production and blending to occur primarily in the Midwest, near resources to produce ethanol, this rule could result in a shift of gasoline supplies to the Midwest at the expense of other regions. DOE has not yet determined whether the gasohol, once blended, would flow back to the regions affected by reduced gasoline supplies. However, since the proposed amendments are expected to serve largely as a codification of certain procedures, or modification of those procedures, which are now undertaken by the Office of Hearings and Appeals to avert these costs, we are unable to state definitely that direct costs will occur or, if so, in what magnitude.

Related Regulations and Actions

Internal: DOE has already provided certain price incentives for the marketing of gasohol. DOE price regulations permit gasohol resellers and retailers to pass through as product costs the cost of nonpetroleum-based alcohol blended with gasoline (45 FR 20104, June 13, 1980). DOE has also issued a rule to permit refiners to allocate all of the costs of alcohol among the various grades of gasoline (44 FR 69594, December 5, 1979). DOE has issued a rule offering an entitlement benefit (a payment related to the

difference in costs between imported and domestic crude) to alcohol producers of ethyl alcohol derived from biomass that is blended with gasoline for use as fuel (44 FR 63515, November 5, 1979). An Environmental Assessment (EA) has been prepared and published for public comment (45 FR 44961, July 2, 1980). On the basis of the Environmental Assessment, DOE has made a finding of no significant impact and determined that it is unnecessary to prepare an Environmental Impact Statement in conjunction with this rulemaking.

External: Gasohol marketing is encouraged by the National Energy Act motor fuel excise tax exemption on gasoline/alcohol blends, which is worth 4 cents per gallon of gasohol (at a 9 to 1 ratio) and 40 cents per gallon of ethanol if blended with gasoline. This is equivalent to \$16.80 per barrel of ethanol. This exemption will continue through the year 1992 under the terms of the Crude Oil Windfall Profits Tax Act (P.L. 96-223, April 2, 1980, § 232(a)). Provisions of various State governments permit whole and partial exemptions from State motor fuel taxes for gasohol, in an attempt to ensure that gasohol is competitively priced.

Active Government Collaboration

DOE is cooperating actively with the Alcohol Fuels Commission on this issue.

Timetable

Final Rule—Fourth quarter, 1980.
Final Rule Effective—30 days after final rule issuance.

Available Documents

Regulatory Analysis (DOE/RG-0032).
Environmental Assessment (DOE/EA-0107).
NPRM—45 FR 34846, May 22, 1980.
Draft Analysis issued May 1980 (DOE/RG-0032).
Environmental Assessment—(DOE/EA-0107), 45 FR 44961, July 2, 1980.
Transcript of Public Hearing—Washington, DC, July 8 and 9, 1980; Des Moines, Iowa, June 23, 1980.

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DOE-ERA**Maximum Lawful Price for Unleaded Gasoline (10 CFR 212.83*)****Legal Authority**

Emergency Petroleum Allocation Act of 1973, as amended, 15 U.S.C. § 175 *et seq.*

Reason for Including This Entry

These proposed regulations could have an annual economic effect of over \$180 million.

Statement of Problem

The present regulations may contribute to unleaded gasoline price differentials between refiners which may lessen the competitiveness of independent marketers. Also, the current rules may encourage refiners to market a premium unleaded gasoline with an unnecessarily high octane although the production of an unnecessarily high octane gasoline is economically inefficient. Also, lack of a satisfactory higher unleaded octane gasoline could lead to fuel switching and contribute to unnecessary pollution of the environment.

Generally, under the current price regulations, the maximum lawful price refiners may charge for unleaded gasoline is the May 15, 1973, selling price of unleaded gasoline plus increased product and nonproduct costs. If a refiner did not sell unleaded gasoline on May 15, 1973, or 30 days prior thereto, as was the case for most refiners, the maximum lawful selling price is imputed. This imputed selling price is the weighted average selling price charged for leaded gasoline on May 15, 1973, of the same or nearest octane as the unleaded gasoline, plus one cent.

Experience has shown that some automobiles do not function satisfactorily on the minimum required grade of unleaded gasoline, 87 octane (R+M)/2

(Research Octane Number + Motor Octane Number)/2.

Research shows that a 90 octane (R+M)/2 unleaded gasoline would meet the requirements of almost all of these automobiles. However, a refiner newly marketing this grade would have a base price which still would be imputed from the May 15, 1973 selling price of the nearest octane leaded regular grade of gasoline. The current regulations encourage a refiner to increase the unleaded gasoline octane to bring it nearer to the premium leaded grade, generally 94 octane (R+M)/2, sold on May 15, 1973. By consuming more crude

oil than is necessary, this increase, which will vary among refiners based on their refining capabilities, is wasteful and unnecessarily expensive to refiners and thus to motorists.

For most refiners, the comparable leaded grade to 90 octane (R+M)/2 was their "regular" leaded grade of gasoline, usually 89 octane (R+M)/2. However, some refiners were marketing a subregular grade whose octane was closer to the minimum unleaded grade and, in at least one instance, a refiner was marketing only a premium leaded gasoline. Those refiners with actual May 15, 1973 sales of unleaded gasoline generally had actual base prices which were higher than those imputed by other refiners, making their prices for unleaded higher.

This proposal would tend to remove inequities imposed by the prior regulations by decreasing base price differentials for unleaded gasoline among refiners and thus improve the competitive positions of independent marketers by removing price disparities in their purchase price.

Alternatives Under Consideration

The proposal provides for two alternatives for refiners to calculate a price for unleaded grades of gasoline. One proposal would recognize the higher cost of improving unleaded octanes by permitting refiners to allocate increased costs to different grades of unleaded gasoline at their discretion. Under current regulations, refiners may not automatically treat new grades of unleaded gasoline as separate product categories. DOE believes that the proposal will remove the disincentive for the introduction of new grades and will encourage the production of unleaded gasoline with more efficient octane ratings. Firms that introduce new grades of unleaded gasoline will automatically be permitted the pricing flexibility to apportion increased costs as the refiners deem appropriate to meet market conditions. This approach would not provide any additional potential revenues because it involves the reallocation of product and non-product costs. It would not provide any additional incentive to refiners to market a higher grade of unleaded gasoline.

The second alternative offers several options for refiners to use in establishing a higher base price for octane increases over the minimum required grade of unleaded gasoline. We based these options on the assumption that a higher base price, which includes a profit element, is necessary to encourage production of a premium unleaded gasoline. The rationale for stimulating

this production is that motorists requiring this grade will otherwise purchase a higher octane grade of leaded gasoline and increase air pollution. Any of the base price increase options, however, are less costly by .5 to 1 cent a gallon to the public than the present regulation would be if the refiner needlessly raised the unleaded octane to benefit from higher premium leaded gasoline base prices under the present regulation. These options remove the disincentive for the production of unleaded gasoline with octane ratings close to the regular leaded gasoline sold on May 15, 1973 because current regulations require that the imputed selling price for such unleaded be calculated on the basis of the lower priced, lower octane leaded gasoline.

Summary of Benefits

Sectors Affected: Refiners, resellers, retailers, and consumers of unleaded gasoline; and the general public.

The effect of the proposed changes would be to decrease base price differentials for unleaded gasoline among refiners. This should translate into prices to independent marketers and resellers which are more comparable to prices being charged by other marketers and contribute to the improvement of their competitive positions. In addition, motorists should have a second grade of unleaded gasoline available at a lesser price than would otherwise be the case if they purchased an octane that is unnecessarily high. The availability of the second, higher octane grade may help prevent misfueling (the switching of a regular grade for an unleaded one) and the resultant pollution of the air. Misfueling occurs because motorists desire a higher octane gasoline to improve engine performance. The Environmental Protection Agency (EPA) contends that misfueling significantly contributes to air pollution.

Summary of Costs

Sectors Affected: Refiners, resellers, and retailers of unleaded gasoline.

The proposed changes could result in no increased costs to the consumer. Additional information is required to confirm this and will be incorporated, if a final rule is adopted, in a final Regulatory Analysis. We currently believe that the proposed revisions will be less costly to the public than the present regulations and that they will restrain potential waste of petroleum products.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

Final Rule—December 1980.

Final Regulatory Analysis—Fourth Quarter, 1980.

Available Documents

NPRM—45 FR 54694, August 15, 1980.

Public comments on above NPRM, and comments from public hearing (September 11, 1980).

All documents are available in the DOE Freedom of Information Reading Room, Forrestal Building, Room 5B-180, 1000 Independence Avenue, S.W., Washington, DC 20585.

Draft Regulatory Analysis—August 1980.

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DOE-ERA**Motor Gasoline Allocation Regulations Revisions (10 CFR Part 211*)****Legal Authority**Emergency Petroleum Allocation Act of 1973, as amended, 15 U.S.C. § 751 *et seq.***Reason for Including This Entry**

The Department of Energy (DOE) motor gasoline allocation program has a significant influence on the energy sector of the Nation's economy. Changes to the overall regulatory scheme can have potential impacts upon every level of supply down to retail outlets and their customers. In addition, if the changes we propose succeed in reducing gasoline lines at retail stations during any future supply shortages, motorists will benefit as they will lose less time from work and waste less fuel waiting in lines.

Statement of Problem

DOE's Mandatory Petroleum Allocation Regulations apply to all domestic transactions in motor gasoline. The regulations operate to allocate the product to historical purchasers as measured during the base period of November 1977 through October 1978. Where supplies are inadequate to meet base period obligations, suppliers are required to recognize certain priority uses and to apply prorated reductions equitably among their customers.

Motor gasoline markets are constantly changing to reflect new marketing techniques, evolving consumer preferences, improvements in efficiency, and competitive advantages among firms. In this context, a rigid allocation system based on historical relationships cannot respond smoothly to recent shifts in demand, and this can result in inadequate allocations of gasoline to areas of greatest need. The principal means to reflect such shifts and changes in marketing practices are contained in procedures available under the program for allocating gasoline to new retail outlets and increasing allocations to existing firms. Additional flexibility is available through the program's State set-aside provisions, under which State Governors are authorized to allocate up to 5 percent of gasoline delivered to the State to meet emergency supply conditions. The allocation program also permits large or "prime" suppliers to a State to redirect a portion of supplies to areas in need as they see fit. However, the evidence to date suggests that these provisions have not been used to equalize regional impacts resulting from localized shortfalls.

A further contributing factor relating to regional supply disparities that have been experienced has been the relative differences in suppliers' allocation fractions. The allocation fraction is the primary measure of a supplier's ability to meet the needs of its historical customers. Each month, a supplier is required to offer to its historical purchasers a volume of gasoline equal to the volume purchased during the same month of the November 1977 through October 1978 base period. When a supplier's total available supply is less than its total obligations, the firm must reduce on a pro rata basis the amount supplied to its non-priority purchasers by the application of an allocation fraction. The numerator of the allocation fraction represents a supplier's allocation supply less obligations to priority use customers and State set-aside volumes. The denominator represents the supplier's base period obligations. If the allocation fraction is less than 1.0, all purchasers whose allocation level is subject to the fraction are offered only that portion of their base period volumes.

During the 1979 summer driving season, 18 States and the District of Columbia experienced moderately severe or severe gasoline lines at the retail level, according to DOE's Energy Liaison Center. The available evidence suggests that gasoline lines and apparent shortages at the retail level occurred mainly in densely populated

urban and suburban areas. These areas appear most prone to gasoline lines because travel and gasoline demand patterns appear to have actually shifted during the generalized shortfall that occurred in 1979. This shift apparently was the result of reduced inter-city travel and travel to vacation and other rural areas by motorists who became concerned about the availability of gasoline. There was relatively less of a reduction of driving within urban regions where a lower percentage of the driving is discretionary.

Our tentative view is that if the present allocation system remains unchanged, the same parts of the Nation which suffered most of the gas lines in 1979—mainly urban areas—may again experience lines during a future supply shortage. To date, the allocation system has not provided sufficient flexibility to respond to these apparent demand shifts, and motorists in urban areas have had to bear a disproportionate share of the hardships associated with gasoline shortages.

On June 6, 1980, an NPRM was issued presenting for public comment alternative proposed revisions to the motor gasoline allocation program (45 FR 40078, June 12, 1980). The pending rulemaking proceeding is intended to identify and explore the extent of such inequities and to provide a public forum to consider the merit of proposed alternative revisions. This rulemaking proceeding is based upon a belief that it is prudent to identify and explore various options for improving the ability of our regulations to minimize the adverse effects of future shortages experienced at the retail level.

In addition, we have also become aware of certain unintended effects of our regulations. We are concerned that certain independently operated retail stations may be experiencing competitive difficulties as a result of their relative inability to obtain increased allocations for increased demand as easily under our regulations as many wholesaler- and refiner-operated stations. The pending proceeding is also intended to identify and explore the extent of such inequities and to provide a public forum to consider the merit of proposed alternative revisions.

Alternatives Under Consideration

Each of the alternative proposals that has been offered is being explored thoroughly and extensive opportunity for public comment and discussion will be provided. On the basis of full consideration of each, DOE may determine to adopt some or all of the following proposals, or may determine

that no action is warranted and terminate the proceeding.

Among the possible alternative regulatory changes that have been proposed are:

(A) More restrictive standards for making allocation assignments for new retail service stations and methods of limiting present interim supply procedures.

(B) More equitable standards for making allocation adjustments to existing service stations.

(C) Increased flexibility for refiners and retail marketers to shift volumes within their own distribution system in response to changing demand.

(D) Clarification of existing regulations to authorize State set-aside officials in emergencies to require a supplier of one brand of gasoline to deliver gasoline to other firms selling a different brand in order to meet emergency supply conditions.

(E) Authorization of resellers supplying more than one brand to maintain and base deliveries on separate allocation fractions.

(F) Substitution of an improved mechanism for providing allocations to geographic areas that have experienced unusual growth.

(G) Increased authority for State Governors to require intrastate redirection of gasoline in order to meet emergency supply conditions.

(H) Designation of vehicle leasing firms as consumers rather than resellers of gasoline (for purposes of the allocation regulations only).

Summary of Benefits

Sectors Affected: Refiners producing gasoline; wholesale and retail gasoline suppliers; wholesale and retail gasoline purchasers; and State governments.

The objective of the pending proposals to revise the allocation regulations is to reduce the distortions that may be occurring as a result of the program's inability to respond to long-term and temporary demand shifts. All of the identified sectors affected can benefit from improvements in the regulatory scheme that permit competition to direct supply toward demand. The qualitative benefits of adopting several of the proposed alternative revisions described above (A-H) are summarized briefly as follows:

(A) and (B)—The proposals to restrict new station access to increased allocations of gasoline and to expand existing station access to increased allocations would tend to alleviate apparent inequities being felt by certain independent gasoline station dealers

under the current provisions. These changes would grant access to increased supplies to these groups on an equal basis and would tend to lead to increased economic efficiencies. The changes would remove a disincentive that may currently exist against upgrading and improving existing retail stations. This would lead to lower cost operations at the retail level and ultimately to lower prices paid by consumers. Adoption of these proposals would also introduce increased competition among firms operating at the retail level and remove any artificial advantages that the current program makes available to firms in a position to enter a market by constructing new stations.

(C)—The proposal to permit refiners and other retail marketers increased flexibility to shift allocations within their own distribution systems would enhance these firms' ability to respond to demand changes since the base period. Added flexibility to respond to real changes in the marketplace could contribute to more efficient distribution systems and decreased costs.

(D) and (G)—The proposals to authorize State officials in implementing the State set-aside program to require suppliers to make the product available to firms operating under a different brand and to order refiners to redirect gasoline supplies could improve the capability of the set-aside program to respond to emergency supply conditions. Currently, many States have adopted branding laws that prohibit such "cross branding" and the proposal would apply only to States that have no such restrictions. The increased flexibility provided to States under the proposals could be useful in resolving unusual or extreme supply problems.

(E)—The proposal to authorize wholesalers that supply more than one brand of gasoline to maintain separate allocation fractions would provide added flexibility to such firms under the program. Currently, firms supplied by more than one brand must apply a uniform allocation fraction to all purchasers irrespective of brand. Under the proposal, such firms would be permitted to place their customers on separate allocation fractions according to brand of gasoline. If adopted, this proposal would tend to relate a firm's supply condition as measured by the allocation fraction to the actual supply position of the ultimate refiner whose brand is associated with its gasoline products. This would operate to make the allocation program more in line with actual supply conditions among firms and could thereby tend to reduce the

artificial effects of the regulatory program.

(F)—The proposal to modify the currently available adjustment to reflect unusual growth could, if adopted, correct a seasonal bias that may be present. Whether the correction would be worth the administrative costs associated with this change, however, is not clear.

(H)—The proposal to reclassify vehicle leasing firms as consumers rather than as resellers under the allocation program would tend to conform with the actual business fractions of such firms and enable them to obtain adequate supplies of unleaded gasoline for their essentially new car fleets.

Summary of Costs

Sectors Affected: Refiners producing gasoline; wholesale and retail gasoline suppliers; wholesale and retail gasoline purchasers; and State and Federal government.

(A) and (B)—The proposals to restrict new station access to increased allocations and to expand existing station access to increased allocations could disrupt supplier/purchaser relationships and entail added administrative costs among the identified sectors affected and the Federal Government. It is estimated that granting to existing service stations the opportunity to apply for increased allocations could contribute significantly to administrative costs of DOE Regional Offices processing such applications. It is estimated that a 25 percent increase in regional staff may be required to respond to existing station applications.

(C)—The proposal to permit refiners and other retail marketers increased flexibility to reassign allocations within their own distribution systems could result in increased administrative costs to such firms in accounting for changed allocations. Some suppliers may be in a position to use the flexibility to exert competitive pressure on other firms within a market. To some extent, this is a benefit that, if abused, could lead to increased concentration.

(D) and (G)—The proposals to authorize State officials to assign suppliers to make the product available to firms operating under a different brand and order refiners to redirect the product to respond to emergencies within their States would also add needed flexibility during a shortage. If exercised, the cross branding authority could be inconsistent with the brand identity objectives of larger firms. Motor gasoline, however, tends to be a readily exchangeable product and making this

authority available to States in an emergency could be a benefit to respond to a gasoline shortfall within a State.

(E)—The proposal to authorize wholesale purchaser-resellers that supply more than one brand of gasoline to maintain separate allocation fractions could grant supplier flexibility that could be used to the detriment of those of his purchasers who do not sell a major branded product. Possible effects of discrimination among such firms' non-branded purchasers are being examined and compensating limitations are under consideration.

(F)—The proposal to modify the current unusual growth adjustment could entail significantly increased administrative costs to suppliers and purchasers of gasoline and to the DOE. The large number of base period relationships that could be affected by the new provisions could result in significant disruptions that may not be worth the mitigating effects of the proposal modification.

(H)—The proposal to classify vehicle leasing firms as consumers of gasoline under the allocation regulations could potentially affect a large number of base period relationships. The modification, if adopted, would have little or no impact on the supply rights of these firms except for unleaded gasoline entitlements during a severe shortage. Otherwise, the modification should result in minimal increased administrative costs.

Related Regulations and Actions

Internal: An NPRM entitled "Motor Gasoline Allocations; Adjustments and Downward Certification" (44 FR 69962) was issued on December 5, 1979. On April 26, 1980, DOE issued a notice of intent not to adopt as a final rule its principal proposal on downward certification. A draft Regulatory Analysis was published at 45 FR 58788 (September 4, 1980). The alternative proposals remain under consideration.

External: None known.

Active Government Collaboration

DOE is actively cooperating with the Small Business Administration in the portions of this proposal concerning assignments for new retail outlets and adjustments for existing retail outlets.

Timetable

Final Rule—December 1980.

Final Rule Effective—30 days after issuance.

Available Documents

Draft Regulatory Analysis (DOE/RC-0037).

NPRM—45 FR 40078, June 12, 1980.

Public comments (hearings held July 17, 21, 24, 28, 29 in Atlanta, Kansas City, San Francisco, Washington, D.C.).

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DOE-ERA

Motor Gasoline—Downward Certification (10 CFR 211.107*)

Legal Authority

Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*

Reason for Including This Entry

This proposed rulemaking is of great public interest; it will examine possible revisions to the Mandatory Petroleum Allocation Regulations that could improve the capacity of the gasoline marketplace to distribute available supplies in an equitable manner during a shortage. The pending proposals present alternative provisions that would require certain wholesalers of gasoline to report or certify to their suppliers reductions in their supply obligations attributable to closed service stations or other customers they previously supplied.

Statement of Problem

Under the allocation program, DOE determines a wholesaler's allocation entitlements by referring to the firm's purchases during a historical base period, which is currently November 1977 through October 1978. When a wholesaler's base period allocation obligations are increased by an Economic Regulatory Administration (ERA) assignment or adjustment, the firm may adjust upward its allocation entitlements by certifying to its suppliers the corresponding increase. However, when a wholesaler's obligations decrease because a relationship with a base period purchaser is terminated (e.g., a retail outlet it supplies goes out of business), there is no equivalent mandatory procedure to certify to its suppliers the corresponding decrease, except where previous upward adjustments have been granted to the firm.

The downward certification proposals are designed to assure that a wholesaler's entitlements from suppliers match more closely the firm's actual obligations to its purchasers under the

program. The changes proposed are intended to restore this balance and to resolve the distortions the absence of a downward adjustment is having on the program's effectiveness as a measure of actual supply conditions.

Alternatives Under Consideration

On November 30, 1979, an NPRM (44 FR 69962, December 6, 1979) was issued presenting several alternative downward certification proposals. After reviewing the extensive public comments received on the alternative proposals, ERA announced on April 21, 1980 that it would not adopt the principal proposed provision and that the rulemaking proceeding would be continued to consider the merit of adopting the alternative proposals (45 FR 28148, April 28, 1980). The alternative proposals remain under consideration, and on August 28, 1980, ERA issued a draft Regulatory Analysis of the alternative proposals (45 FR 58788, September 4, 1980). The alternative proposals under consideration are as follows:

The first would require downward adjustment only as a condition precedent to receiving an allocation increase. Under this alternative, certain wholesalers referred to as "wholesale purchaser-resellers" under the regulations would not be required to decrease their allocations when their supply obligations decrease except to the extent that they wish to certify allocation increases to their suppliers.

The second would require adjustments to reflect an allocation decrease when retail outlets close but would not require an adjustment to reflect an allocation decrease when a reseller is relieved of its obligation to supply certain wholesale or bulk purchaser customers.

The third would require a wholesaler to report a decreased obligation only when a supplier's base period obligations are assumed by another supplier in accordance with the regulations. To a varying extent, ERA requires applicants to account for the reduced obligation when its Regional Offices approve applications for such reassignments.

The fourth would require a wholesaler to report a decreased allocation obligation only for decreased obligations due to station closings that occurred subsequent to the end of the current base period.

The fifth would apply prospectively from the date of the adoption of a final rule. Under this alternative, wholesalers would be required to report to their suppliers decreased allocations for lost business occurring in the future.

In connection with these alternatives, ERA stated that none are mutually exclusive, and that features from more than one alternative could be included in a final rule.

Summary of Benefits

Sectors Affected: Wholesale and retail gasoline suppliers; and wholesale and retail gasoline purchasers.

If adopted, a procedure that would require wholesalers to notify their suppliers of reduced needs by certifying a downward adjustment in the allocations of gasoline would tend to restrict the present ability that some wholesalers have under the rule to increase their share of a market solely by a complex manipulation of the allocation regulations. One objective of the allocation program is to minimize interference with market mechanisms and this may be frustrated in cases where wholesaler expansion is permitted beyond that which would occur in a free market. In the context of a generally fixed amount of available supply, the increases that some wholesalers are able to obtain under the present rules may often be made at the expense of existing retail outlets that have no comparable means of obtaining allocation increases. No action in this proceeding would continue the favorable treatment wholesalers receive, and this could, over the long term, contribute to economic inefficiency. The adverse impacts on the independent retail segment of the market would also continue.

A downward certification procedure would reduce wholesalers' flexibility to shift allocation volumes within markets and divert the product unlawfully to purchasers having no allocation entitlements under the regulations.

These restrictions would operate to contain motor gasoline within the allocation program and thereby assure that the product is available to firms having supply rights under the program. Adoption of a downward certification requirement could increase the allocable volumes of motor gasoline to certain independently operated retail service stations.

The various proposed downward certification provisions that are under consideration are being reviewed in conjunction with the pending revisions to the motor gasoline allocation programs as set forth in the Calendar entry herein entitled "Motor Gasoline Allocation Revisions (10 CFR Parts 205 and 211.)"

Summary of Costs

Sectors Affected: Refiners producing gasoline; wholesale and retail gasoline suppliers; and wholesale and retail gasoline purchasers.

Administrative costs to affected wholesalers, suppliers of wholesalers, and the ERA would be increased if a procedure were adopted to require wholesalers to report and certify to suppliers decreases in supply obligations attributable to closed service stations and other lost accounts. Wholesalers subject to such reductions would lose their flexibility under the present program to shift product to areas experiencing stronger demand, and this could lead to distortions and inefficiencies in the marketplace. Adoption of such a procedure would also restrict certain wholesaler increases in market share that have been occurring as a direct result of the absence of a downward certification procedure. Some costs could be associated with this result because an expanding independent marketing segment can operate to assure that competition achieves its goal of improving distribution of supplies and restraining price.

Related Regulations and Actions

Internal: An NPRM entitled "Motor Gasoline Allocation Regulations Revisions" was issued on June 6, 1980 (45 FR 40078). These proposals remain under consideration and any action taken thereon may take into account possible aspects of the downward certification proceeding.

External: None.

Active Government Collaboration

None.

Timetable

Final Rule—To be determined.

Final Rule Effective—30 days after issuance.

Available Documents

Draft Regulatory Analysis (45 FR 58788, September 4, 1980).

NPRM—44 FR 69962, December 6, 1979.

ERA decision to continue rulemaking proceeding to consider merit of adopting alternative proposals (45 FR 28148, April 28, 1980).

Public comments on NPRM and comments on public hearings (January 31 and February 1, 1980).

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DOE-ERA

Natural Gas Curtailment Priorities for Interstate Pipelines (10 CFR Part 580*)

Legal Authority

Natural Gas Act, 15 U.S.C. § 717 *et seq.*; Natural Gas Policy Act of 1978, §§ 401, 402, 403, 15 U.S.C. §§ 3391-3393; Department of Energy Organization Act, §§ 301(b), 402(a)(1)(E), and 501, 42 U.S.C. §§ 7151(b), 7172(a)(1)(e), and 7191; E.O. 11790 (39 FR 23185), E.O. 12009 (42 FR 46267).

Reason for Including This Entry

The Department of Energy Organization Act (DOE Act) makes the Secretary of Energy responsible for reviewing and establishing natural gas curtailment (rationing) priorities. This rule will implement the curtailment priorities established by the Natural Gas Policy Act (NGPA) and will address, as indicated by our review, any other changes we determine to be necessary. We are including this rule because of its potentially far-reaching effects on interstate pipelines and local distributors and their natural gas customers.

Statement of Problem

Natural gas curtailment priorities deal with the manner in which natural gas will be allocated to customers of interstate pipelines when there are supply or capacity shortages. Under the DOE Act, the Secretary of Energy is responsible for establishing and reviewing priorities for curtailments. The Secretary of Energy has delegated this authority to the Administrator of the Economic Regulatory Administration (ERA). Under the DOE Act, the Federal Energy Regulatory Commission (FERC) administers and implements the curtailment policies developed by the ERA.

Historically, FERC's predecessor, the Federal Power Commission (FPC), had exclusive Federal jurisdiction under the authority of the Natural Gas Act (NGA) for curtailment of natural gas in interstate pipelines. The FPC dealt with curtailment of natural gas on a case-by-case basis. From the rulings issued in these cases by the FPC, a priority system developed which ranked end-users of natural gas from high (last to be curtailed) to low (first to be curtailed). The FPC priority system generally placed residential and small commercial

users in the highest priorities and interruptible, large-volume, industrial users in the lowest, first-curtailed priorities.

Several considerations shaped FPC's approach to the curtailment priority system: first, the importance of gas used to protect health, safety, and other human needs; second, the operational difficulty of physically cutting off or reducing service to residential and small commercial customers; third, the differences in the costs that different kinds of end-users would experience in converting to an alternate fuel.

This review and rulemaking process will implement the provisions of the NGPA that mandate the establishment of certain curtailment priorities. Additionally, the rulemaking provides an opportunity for review of gas curtailment priorities, adopted by the FPC in 1973, in light of current circumstances and requirements.

Specifically, the review of curtailment priorities has focused on the following:

(1) High priority and essential agricultural uses. Section 401 of the NGPA requires the Secretary of Energy to prescribe a rule restricting interstate pipelines from curtailing the requirements of "high priority users" (e.g., schools, hospitals, residences) and of essential agricultural uses that the Secretary of Agriculture has certified as necessary for full food and fiber production. Essential agricultural uses may be curtailed only to meet needs of "high priority users" or when FERC determines in consultation with the Secretary of Agriculture that an alternate fuel is economically practicable and reasonably available. DOE has previously issued a rule implementing these priorities (see CFR Part 580, 44 FR 15642, March 15, 1979). DOE anticipates that the substance of that rule will be incorporated into the present rulemaking.

(2) Industrial process and feedstock uses. Section 402 of the NGPA directs the Secretary of Energy to prescribe a rule limiting the circumstances in which an interstate pipeline may curtail gas supplies used in an industrial process or as a feedstock. Use as a feedstock refers to gas employed as an ingredient of the end-product, as distinguished from gas used to power production machinery.

(3) Emergency allocation authority. Relevant sections of the National Energy Act (NEA) authorize the President to declare a natural gas supply emergency, which could trigger various consequences. As an example, the President could authorize an interstate pipeline to make emergency purchases from intrastate pipelines under short-term contracts. This authority, while

outside the scope of the curtailment priority system itself, must work in concert with it. Therefore, this rule will consider the effects of the NEA emergency authorities on the curtailment priority system. Decontrol of natural gas prices will not affect the curtailment priorities established by this rule.

Alternatives Under Consideration

(A) Maintain a system similar to the present system as developed by the FPC, while making those changes required by the NGPA and improving the present system by facilitating free flow of gas between systems. As compared to making no change in the present system, this alternative would have economic effects on the order of magnitude of \$1 billion. These effects would be offset by \$0.9 billion, which is the estimated cost of establishing the essential agricultural priority required by the NGPA. If the present system is also improved by allowing a "percentage limitation" option, i.e., allowing lower priorities not to be curtailed completely before a higher priority is curtailed, this would provide further reduction in the cost of the curtailment system. The net benefit of this alternative would be on the estimated order of magnitude of \$1.2 billion (\$1 billion plus \$1.1 billion minus \$0.9 billion).

The present curtailment system also has the advantage of being familiar to both gas suppliers and users, which would minimize the uncertainty that could otherwise lead to additional costs if the system were changed and could offset most of the benefits of a newer and more complicated system such as a "pricing" system. However, a pricing system could allocate natural gas to users more precisely on the basis of cost benefit analysis.

(B) Develop a curtailment system as in alternative (A), but updating the base period from which requirements are measured. Systems using a fixed base period instead of rolling or updating the base period are likely to cause increases in shortages costs if they switch to another fuel under the present Federal curtailment approach. A rolling base period involves updating the index of gas requirements from which curtailments are measured. In rolling the base period, the total supply of gas available to all distribution companies served by a pipeline would not be affected, but the supply would be reallocated in proportion to the current end-use profiles of the pipeline distribution companies' customers which may have changed over time.

Although this updating process may give a more current picture of the end-use of the gas delivered, it would increase the costs of curtailments by about \$0.2 billion per year, if there were a complete shift to a rolling base period in the present Federal plans. Suppliers and users have instigated self-help measures obtaining their own supplies of gas under the present curtailment system, and the cost of disrupting these self-help projects would most likely offset any benefits derived from the updating process.

(C) Develop a pro-rata system that reduces all users' deliveries by a percentage equal to the percentage of supply reduction. It is tempting to think that the apparent fairness of pro-rata curtailment justifies this alternative and that users with low conversion costs would switch to another fuel, allowing a gradual evolution to an optimal curtailment system based on pro-rata allocation, but this is not the case. Unfortunately, switching to a pro-rata system would destroy good parts of the present system and eliminate the benefits from users who have already adjusted to curtailments under the present system.

The present FERC curtailment policy provides for pro-rata allocation within each priority category. Since the present categories have been formed by an end-use system that does recognize differences in shortage costs, a full pro-rata plan is bound to increase costs. It will lump all users into one category even though surveys show that there are widely different costs. The 1976-1977 shortage had impact costs of \$54/Mcf (thousand cubic feet) of shortfall in higher priorities and only \$2/Mcf in lower priorities. Pro-rata is less precise than the end-use approach in present curtailment plans for identifying uses which have high costs of conversion to other fuels.

In addition to causing higher shortage costs, pro-rata is not practical and not in accordance with new legislation. For example, pro-rata cannot be applied to residential and small commercial users for operational reasons. It cannot be applied to "agricultural uses" and "essential industrial process or feedstock uses" because of stipulations in the NGPA.

Weather and price controls combined create shortages that cause high shortage costs under pro-rata. There are high costs of fuel switching, and there are high impact costs for users who cannot justify fuel substitution. Even when feasible, fuel substitution is expensive when the investment is only for infrequent shortages.

(D) Use some form of "pricing" or bidding approach to distribute available gas supplies during periods of curtailments instead of a rationing system, e.g., end-use customer bidding for available gas supplies. Fuel substitution costs vary greatly, even among users within the same carefully designed end-use priority categories; precise ranking of users in line with substitution costs may not be possible except under some type of pricing approach. Surveys reveal that substitution costs range from \$2/Mcf to \$20/Mcf even within one end-use category, as presently constituted; in addition, shortage impact costs range from \$0.10/Mcf to \$100/Mcf among users within one end-use priority class due to large impacts as curtailment reaches 100 percent.

To be practical, a pricing system must be implemented at the end-user level. This would involve changes in concepts for State regulation and would require distribution company participation. There appears to be no practical implementation plan for a pricing system with present Federal constraints and using only interstate pipeline participation.

Additional studies are necessary to determine if a practical pricing approach could be developed and whether it could attain most or all of the \$3.6 billion savings estimated in our Regulatory Analysis as the net national benefit of switching from the present system to some type of pricing system. These studies could also determine if implementation of a pricing approach would have significant costs that might affect the annual gains. A thorough study of a pricing approach prior to any major change in curtailment policy would be valuable for outlining the best long-run solution to managing natural gas curtailments.

We are also considering whether the guidelines should apply strictly to all interstate pipelines which transport gas, or whether FERC should be allowed to depart from strict application of the general policy under the ERA rule to account for the differing circumstances of individual pipelines, making adjustments where they are necessary. Individual pipelines vary as to number and types of customers and suppliers of gas, as well as to the conditions under which they operate, such as weather conditions in their particular service areas.

The present Federal approach to curtailment priorities is based on end-use; it reflects costs of substitution and has the benefit of being familiar to suppliers and users after years of operation. NGPA mandates some

changes in priorities, but no further changes are warranted because benefits will not justify the greater costs and uncertainty from changing priorities. However, there are worthwhile modifications that can be made to the overall functioning of the present system. For example, the total costs of natural gas curtailments could be reduced if priority systems and natural gas policies in general could encourage freer flow of gas from users with low costs of fuel substitution to users with high costs of substitution.

The proposed rule concerns all priority-of-service categories related to curtailment of natural gas deliveries by interstate pipeline companies. The rule is consistent with the majority of the comments responding to our Notice of Inquiry (NOI) and the findings of our Regulatory Analysis, and adopts in substance our previously issued final rule regarding essential agricultural uses. Priorities established by the proposed rule, with Priority One to be the last curtailed, are as follows:

(1) High-priority, which includes residential, small commercial (less than 50 Mcf on a peak day), schools, hospitals, plant protection, and institutions such as prisons.

(2) Essential agricultural uses, certified by the Secretary of Agriculture, without alternate fuel capability.

(3) Essential industrial process and feedstock uses as defined by the proposed rule, without alternate fuel capability.

(4) All gas use less than 300 Mcf per day not included in Priorities One through Three, including large commercial users.

(5) All other users not included in Priorities One through Four, with volumetric subcategories, i.e., larger users would be curtailed before smaller users.

The first three priorities are defined in accordance with the language in Title IV of the NGPA and our final rule governing priorities for essential agriculture use. The 300 Mcf per day cutoff level of Priority Four is based on comments from the NOI indicating that it is logistically almost impossible to curtail such uses on a short-term basis. These uses may be presumed not to have alternate fuel capacity.

The rule provides more flexibility for priority categories Four and Five by providing that curtailment of volumes within any priority category or subcategory below the statutorily mandated categories (Priorities One, Two, and Three) may be limited to some percentage of the total requirements in circumstances where such treatment would reduce shortage costs (i.e., cost of

substitute fuels, lost production, etc.) and where more precise end-use priority classification is not possible.

Imprecision in present curtailment plans might be reduced in two ways. First, individual suppliers and users could more precisely classify uses within the base period requirements for each priority category. Second, a Federal rule could give higher priority to more critical volumes within categories, e.g., by establishing subdivisions within intermediate priorities, such as the "percentage-limit" option. Priority Five is subdivided into volumetric ranges for requirements over 300 Mcf per day based on findings in the Regulatory Analysis that large users have lower curtailment costs per unit of gas.

The proposed rule should give the FERC ample flexibility to take into consideration a pipeline's specific circumstances in implementing the rule.

While the proposed rule sets out a curtailment priority system which the comments to our NOI and our draft Regulatory Analysis say should reduce the overall national costs of curtailments, other costs from implementing changes for the sake of change may outweigh any benefits. To prevent this, the proposed rule states that "nothing requires that a curtailment plan in effect on the date of the adoption of this rule be changed, except to the extent that changes are necessary to protect Priorities One, Two, and Three from curtailment."

Summary of Benefits

Sectors affected: General public.

Any reduction in the economic costs of curtailments under improved curtailment options helps to reduce the inflationary effects that would otherwise result from cost increases stemming from delayed production and from shifting production among producers. Studies and analysis show that the net macro-economic effect of using any alternative that reduces curtailment costs is a reduction in the amount of inflation equal to the reduction in total costs resulting from the use of such alternative.

Summary of Costs

Sectors affected: Interstate pipelines; natural gas distribution companies; low priority direct users of natural gas, such as large-volume industrial or electric utility users; high priority users, such as residential users; customers of industrial users and electric utilities; and the general public.

The selection of a curtailment option has significant effects on real Gross

National Product. Curtailment impacts on gas users are offsetting because any permanently lost production of goods and services by a curtailed end-user is made up by other establishments, and temporarily lost production is made up later by the same end-user. Surveys of redistribution of services indicate that this is usually not a problem because of the short duration of critical gas shortages.

The following types of costs have been analyzed:

(1) **Users' shortage impact costs:** These are all users' costs that can be attributed to a specific shortage of natural gas, e.g., the higher costs of substitute fuels, cost of interrupted production and unemployment.

(2) **Users' shortage coping costs:** These are all users' costs to prepare for natural gas curtailment whenever it might occur, e.g., the investment costs of having dual-fuel capability to prevent interrupted production during curtailment.

(3) **Suppliers' operating costs:** All costs that pipeline and distribution company suppliers incur to supply and allocate gas, e.g., the cost of maintaining underground storage, liquefied natural gas, propane storage to meet sharp peaks on abnormally cold days, and the cost to operate in a spot market during potential shortages.

(4) **Non-users' pollution costs:** The costs of different pollution levels, e.g., the additional pollution damage when dirtier fuels are substituted for natural gas.

For example, the "users' shortage impact costs" that could result from doing nothing about the present curtailment system are estimated to be on the order of magnitude of \$4 billion; on an overall national basis the "user shortage coping costs" are \$1.6 billion, and the "suppliers' operating costs" are \$18 billion, or a total of \$23.6 billion (1978 dollars). These same costs for a system based on a pricing approach which is integrated with rate design structure is estimated to have total costs of \$20 billion. The result of using a pricing approach could theoretically reduce costs by \$3.6 billion (\$23.6 billion less \$20 billion). These costs represent the willingness to pay to avoid curtailments. These costs are based on simulations of day-to-day management of curtailments in the face of uncertain weather. Shortage costs are the average for all types of weather that could occur. The studies of "non-user pollution costs" indicate a negligible cost change between the alternatives for changing the present rationing approach and doing nothing, and an uncertain gain if some type of pricing approach is used.

The result of case studies indicated there would be little change in environmental impacts from the status quo of any of the curtailment alternatives. The impacts of all alternative curtailment policies on annual pollutant concentrations were nearly identical to the impact of existing curtailment policy. The net effect, therefore, of any change from the status quo was essentially zero. This is explained in major industrial areas by the fact that large quantities of emissions from other sources in these major industrial areas completely overshadow the emissions from the burning of alternate fuels during periods of winter season natural gas curtailment.

Exceptional cases of larger incremental increases in pollutants can be dealt with on a case-by-case basis. The FERC currently has authority to grant exemptions from a given curtailment policy if it finds that undue hardship otherwise would result. The Draft Environmental Impact Statement therefore recommends that the FERC continue environmental reviews of individual pipelines for the purpose of evaluating requests for exemptions from applicable curtailment rules.

Related Regulations and Actions

Internal: "Curtailment Priorities for Essential Agricultural Use," final rule issued on March 9, 1979 (44 FR 15642). "Emergency Natural Gas Regulations" (under consideration).

External: FERC—Rules issued under Title III of the NGPA.

FERC and Department of Agriculture—Rules issued under Title IV of the NGPA.

Active Government Collaboration

The Federal Energy Regulatory Commission staff is kept informed of Economic Regulatory Administration activities. The Commission is formally reviewing the DOE-ERA rule, as provided in § 404 of the DOE Act. ERA and FERC held four joint meetings on this NPRM in July and August 1980 (Chicago, Atlanta, San Francisco, and Washington, DC).

Timetable

Final Rule—December 1980.

Final Rule Effective—Immediately on publication in the Federal Register.

Available Documents

Final Rule—"Curtailment Priorities for Essential Agricultural Uses," Docket No. ERA-R-78-22 (44 FR 15642, March 15, 1979).

NOI—"Concerning Review of Natural Gas Curtailment Priorities," Docket No.

ERA-R-79-10 (44 FR 16954, March 20, 1979).

NOI—"Concerning Use of Natural Gas Authorities to Increase Coal and Other Non-Petroleum Fuel Usage and Heavy Oil Production," Docket No. ERA-R-79-49 (44 FR 61243, October 24, 1979).

NPRM—45 FR 45098, July 2, 1980, and related Regulatory Analysis and Environmental Impact Statement.

Public comments on the above.

All documents are available in the DOE Freedom of Information Reading Room, Forrestal Building, Room GA-142, 1000 Independence Avenue, S.W., Washington, DC 20585.

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DOE-ERA

Powerplant and Industrial Fuel Use Act of 1978; Cogeneration Exemption (10 CFR Parts 500*, 503*, 504*, 505*, and 506)

Legal Authority

Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*; Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. § 8301 *et seq.*; E.O. 12009.

Reason for Including This Entry

The Department of Energy (DOE) believes that this rule is important because it will establish a statewide energy limit as a means of encouraging cogeneration in regions where there is a potential for oil and gas savings, while insuring that new alternate fuel-fired capacity will not be deferred.

Statement of Problem

Under the Powerplant and Industrial Fuel Use Act of 1978 (FUA), new and existing powerplants and major fuel burning installations (MFBIs), including cogenerators (electric powerplants or major fuel burning installations that produce electric power and any other form of useful energy, such as steam, gas, or heat, which is or will be used for industrial, commercial, or space heating purposes), are prohibited from using oil and natural gas, unless the Economic Regulatory Administration (ERA) grants an exemption for such uses (see 45 FR 36871, May 30, 1980). The purpose of this prohibition was to conserve our supplies of oil and of natural gas (at the time the Act was passed, natural gas was in

short supply) and to encourage the use of other fuels. Sections 212(c) and 312(c) of the Act specifically provide for exemptions for oil and natural gas use in eligible new and existing cogenerators.

ERA adopted interim rules relating to exemption for cogeneration facilities on May 17 and July 23, 1979 (44 FR 28950 and 44 FR 43176, respectively). After reviewing the comments on the interim rules, ERA determined that before it adopts a final rule on cogeneration, it would be appropriate to propose and solicit public comment on other methods of implementing the cogeneration exemption sections of FUA.

Therefore, ERA is proposing a new approach in an NPRM that encourages cogeneration in those regions of the country where there is a potential for oil and gas savings, while insuring that new alternate fuel-fired capacity would not be deferred. This approach proposes three methods for qualifying for a cogeneration exemption: (1) a showing of overall oil/gas savings through the use of cogeneration, including a demonstration that new coal- or nuclear-fired facilities will not be delayed as a result of cogeneration; (2) a state certification that a cogenerator is to receive an "allocation" of cogeneration capacity (states would be allowed to grant allocations up to a limit set by ERA, to assure that cogenerators displace only oil- or gas-fired electric utility powerplants); or (3) a showing that the exemption would be in the public interest.

In addition, ERA is seeking public comments on a proposal to amend the current definition of "electric generating unit" to avoid the possible unintended treatment of certain cogenerating MFBIs as powerplants and, thus, perhaps inhibit cogeneration which would otherwise be economically efficient.

Alternatives Under Consideration

A. Electric Generating Unit.

ERA seeks comment on whether the dividing line between MFBIs and powerplant cogenerators should be "half the useful energy output" or some other percentage.

ERA is also proposing an alternative definition of an electric generating unit: "Electric generating unit" does not include (1) any "electric generating unit" subject to the licensing jurisdiction of the Nuclear Regulatory Commission; and (2) any cogeneration facility, less than half of the annual electric power generation of which is sold to or exchanged with an electric utility for resale by the utility to consumers other than the cogenerating supplier.

Our proposed definition would only refer to net electrical power sold or

exchanged for resale; it would not include amounts sold to the grid but repurchased by the cogenerator firm for its own use. This concept could also be adopted in the primary proposal, adding the word "net" before "annual electrical power generation" in the second exception. ERA has reservations about whether this definition is permitted under FUA. We are not yet persuaded that it is appropriate, since it could result in increases in oil and gas prices which are currently below market clearing prices. Moreover, it could result in the deferment of baseload alternate fuel-fired electrical generating capacity. We solicit comments whether either of the alternative definitions is appropriate, as well as the impact they may have with respect to the development of energy efficient cogeneration and on future alternate fuel use for electrical generation.

ERA also solicits other appropriate methods of distinguishing MFBIs and powerplant cogenerators and their impact on cogeneration and future oil and gas use.

B. Cogeneration Exemption: Alternative Proposal for States Using Oil and Gas for Baseload Electrical Cogeneration.

ERA seeks comment on an alternative proposal for determining eligibility for cogeneration exemptions in those states in which there are a significant number of existing oil/gas-fired baseload powerplants.

In this proposal, ERA has assigned to each of the oil/gas-dependent states an initial "Cogeneration Electric Capacity Limit" consisting of a total megawatt output instead of a total energy input as described in the primary proposal. Under this approach, the limit is focused solely on the electrical generation by the cogenerator and does not include the nonelectric output (e.g., industrial steam, heat, etc.).

Summary of Benefits

Sectors Affected: Potential industrial and electric powerplant cogenerators; and the general public.

Any of the alternative proposals should increase the amount of cogeneration. Without modification to the FUA jurisdictional facilities or modification to the exemption provision for cogenerators, the oil and gas savings which could be achieved by use of this technology might be lost.

Summary of Costs

Sectors Affected: The general public.

Certain industrial and electric powerplant facilities which could have used coal or other alternate fuels might

instead use oil and gas in cogeneration facilities if the prohibitions and exemptions applicable to such facilities are relaxed.

Related Regulations and Actions

Internal: "New Electric Powerplants and Certain New Major Fuel Burning Installations; Use of Petroleum and Natural Gas" (45 FR 38276, June 6, 1980). "Calculation of Cost of Using Alternate Fuels under the Powerplant and Industrial Fuel Use Act of 1978" (45 FR 42190, June 23, 1980). "Powerplant and Industrial Fuel Use Act of 1978; Existing Facilities" (45 FR 53682, August 12, 1980).

External: Public Utility Regulatory Policies Act of 1978 (45 FR 12214, February 25, 1980, and 45 FR 17959, March 20, 1980).

Active Government Collaboration

None.

Timetable

Final Rule—End of calendar year, 1980.

Final Rule Effective—30 days after issuance.

Available Documents

NPRM—45 FR 53368, August 11, 1980.

All documents (including public comments in response to the NPRM and comments from public hearings held September 25, October 6, and October 9, 1980) are available in the DOE Public Information Office, Room B110, 2000 M Street, N.W., Washington, DC 20461.

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DOE-Resource Applications

Outer Continental Shelf (OCS) Sequential Bidding Regulations (10 CFR Part 376)

Legal Authority

Department of Energy Organization Act, §§ 302(b)(1) and 303(c), 42 U.S.C. • §§ 7152(b)(1) and 7153(c); and the Outer Continental Shelf Lands Act, as amended, § 8(a)(1), 43 U.S.C. § 1337(a)(1).

Reason for Including This Entry

This entry is included because sequential bidding would improve the competitive position of smaller firms for OCS oil and gas leases.

Statement of Problem

The present cash bonus-fixed royalty bidding system for Outer Continental Shelf (OCS) leases requires the Federal Government to offer all drilling areas (tracts) included in an OCS lease sale to bidders at the same time. All bids must be sealed and accompanied by one-fifth of the cash payment the bidder intends to pay for the lease (cash bonus). Bids are opened, announced publicly, and recorded, but no bids are accepted or rejected, and no leases are awarded at that time. Within 60 days of the opening of bids, the Department of the Interior (DOI), which administers this program, decides whether to accept the bid from the highest qualified bidder for each tract. Bids that DOI does not accept within the 60-day period, it rejects. DOI returns the money that was deposited on rejected bids.

The present bid opening system requires a substantial commitment of cash resources by firms to particular OCS lease sales; this may strain the ability of some firms to participate in the OCS leasing process. Bidders must be prepared to support each bid immediately with a deposit of one-fifth of the total cash payment. Opening all the bids at the same time may limit the number and magnitude of bids that an individual firm is able to submit. In addition, a firm might win on a greater number of tracts in an OCS lease sale than it had anticipated, which could call for bonus payments that exceed the firm's financial resources, forcing it to search for additional sources of capital.

The Department of Energy (DOE) estimates that more than 100 smaller firms are more subject to constraints of this type than larger firms. Some small companies may have withdrawn from competition for tracts because of financial barriers. In addition, the simultaneous nature of the bidding process may tend to preserve an informational advantage that larger firms may have over smaller ones because they can afford more extensive exploration in advance of a lease sale.

Under § 302(b)(1) of the Department of Energy Organization Act, DOE has authority to promulgate regulations which foster competition for Federal leases, to assure the public a fair return on its resources. Thus, DOE is interested in alternative bidding mechanisms which may improve the ability of smaller companies to compete in these lease sales.

Sequential bidding would address these problems by dividing an OCS lease sale into at least two bidding sessions, separated by a minimum of 48 hours. Tracts would be assigned to

bidding sessions through a random selection procedure; bidding sessions each would consist of an approximately equal number of tracts. Cash bonus deposits accompanying the highest bid on each tract would be retained by DOI until it made a decision on awarding leases. DOI would return all other cash bonus deposits to the bidders that submitted them immediately after the conclusion of each bidding session. Arrangements for disclosure of bids are presently being discussed within DOE and DOI; they include no information release, announcement of the highest bidder, and disclosure of all bidders and amounts of bids at the end of each bidding session.

Alternatives Under Consideration

Possible alternatives to sequential bidding which we have been considering include a "bid limit" option, which would allow bidders to set a "maximum aggregate winning cash bonus limit" for the lease sale. This would enable a firm to bid on tracts with the assurance that its winning bids would not exceed an amount which it had stipulated.

Another possible approach that might achieve results similar to sequential bidding would be to hold lease sales at shorter intervals, each sale with approximately the same number of tracts. However, in order to reduce a bidder's financial exposure as effectively as we think sequential bidding could do, 18 to 24 lease sales would be necessary each year compared with five to six lease sales now being held annually. The administrative burdens on DOI associated with this alternative would be severe.

Retention of the present bid opening system is another alternative. This alternative would preserve a maximum degree of simplicity in administrative matters, but would not address the problems we have discussed above.

DOE has proposed that sequential bidding be tested on an experimental basis. This will allow bidders to become familiar with the process, and allow DOE and DOI to study bidder reactions. This experimental approach is an innovative alternative to an immediate move to an unproved new bidding process.

Summary of Benefits

Sectors Affected: Off-shore oil and gas extraction (including independent producers, joint business ventures, and other firms participating in offshore operations), particularly small firms; and the general public.

DOE expects sequential bidding to foster competition for Federal OCS leases, partially by easing financial

barriers to participation, and partially by reducing informational advantages that major OCS participants currently have. Returning cash bonus deposits of unsuccessful bidders after each session would allow them to use returned funds in the subsequent bidding session. Announcing the amount of the high bid for each tract will provide information on the value other bidders have placed on tracts as a result of their exploration. These changes will tend to equalize the informational and financial position of smaller firms participating in leasing competition.

DOE estimates that the application of sequential bidding to an OCS lease sale would yield greater revenue to the Government because of increased competition for OCS leases.

The use of sequential bidding primarily affects current and prospective bidders for OCS leases. DOE anticipates that smaller firms would benefit more from sequential bidding than would the major participants in OCS lease sales.

Summary of Costs

Sectors Affected: DOE; and DOI.

The use of sequential bidding imposes a relatively minor administrative cost on DOE and DOI in performing additional analyses and extending the actual conduct of the sale over a minimum of three days.

Related Regulations and Actions

Internal: Final OCS bidding system regulations, published at 45 FR 9536, February 12, 1980 and 45 FR 36784, May 30, 1980 (10 CFR Part 376).

External: Current OCS lease sales bidding procedures, administered by the Department of the Interior, found at 43 CFR 3300.

Active Government Collaboration

Department of the Interior. The Department of Justice and the Federal Trade Commission are advising on competition issues.

Timetable

Final Rule—First quarter, 1981.

Final Rule Effective—60 days after it is issued.

Available Documents

Draft Regulatory Analysis, "Increasing Competition for Federally-Owned Mineral Fuels by Altering the Present Bidding Process to Allow for Sequential Bidding" (September 2, 1979). NPRM—44 FR 52842, September 11, 1979.

Public comments in response to NPRM, and comments from public hearing (October 15, 1979).

All documents are available in the DOE Freedom of Information Reading Room, Room GA-142, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585.

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DOE-RA

Proposed Regulations Establishing Alternative Bidding Systems for Coal Lease Sales

Legal Authority

Department of Energy Organization Act, §§ 302(b)(2) and 303(c)(1), 42 U.S.C. §§ 7152(b)(2) and 7153(c); Mineral Lands Leasing Act, §§ 2(a), 7(a), and 32, 30 U.S.C. §§ 201, 207, and 189; and the Mineral Leasing Act for Acquired Lands, §§ 3 and 10, 30 U.S.C. §§ 352 and 359.

Reason for Including This Entry

The Department of Energy (DOE) includes this entry because it increases competition for Federal coal leases, thereby encouraging the development of coal resources in an efficient and timely manner.

Statement of Problem

On August 4, 1976, Congress enacted the Federal Coal Leasing Amendments Act of 1976 (FCLAA, P.L. 94-377, 90 Stat. 1083), which amended the Mineral Lands Leasing Act of 1920 (MLLA, Act of February 25, 1920, ch. 85, 30 U.S.C. § 181 *et seq.*). The legislation addressed eight major problems with the then existing Federal coal leasing program. These problems were: (1) speculation; (2) concentration of holdings; (3) inadequate return to the public; (4) need for environmental protection, planning, and public participation; (5) adverse social and economic impacts; (6) need for information; (7) need for maximum economic recovery; and (8) military lands.

Further, as a result of the 1973 oil embargo by the Organization of Petroleum Exporting Countries (OPEC) and the ensuing debate over the need for a definitive national energy policy, a National Energy Plan (NEP) was adopted and published on April 29, 1977. Objectives of the NEP included:

1. reducing dependence on foreign oil and vulnerability to supply interruptions;

2. substitution of abundant energy resources for those in short supply; and
3. expanding U.S. coal production and use.

On April 15, 1979, the President delivered his Energy Address to the Nation. On July 15, 1979, the President again addressed the Nation about energy. In his addresses, the President spoke about the Nation's energy problems and the steps that had to be taken to alleviate those problems. Among the steps listed were:

1. encouraging domestic production of energy; and
2. shifting to more abundant sources of energy.

One of the Nation's most abundant resources of energy is coal. However, there has not been general leasing of Federal lands for coal production since 1971. Under regulations published by the Department of Interior (DOI) on July 19, 1979 (44 FR 42585), Federal coal leasing is scheduled to resume, with the first sale scheduled for January 1981.

The proposed regulations address some of the above noted problems, goals, and changes in the law through establishing coal bidding systems and procedures to be used at coal lease sales. These bidding systems and procedures can be used to achieve some of the goals of the FCLAA (i.e., to discourage speculation and concentration of holdings and to ensure receipt of a fair return), the NEP, and national energy policy.

On August 4, 1977, Congress enacted the Department of Energy Organization Act (DOE Act, 42 U.S.C. § 7101 *et seq.*). Section 302(b) of the DOE Act (42 U.S.C. § 7152(b)) gave the Department of Energy a role in Federal coal leasing by transferring to the Secretary of Energy the functions of the Secretary of Interior to promulgate regulations under five statutes, including the MLLA and the Mineral Leasing Act for Acquired Lands (MLAAL) which relate to, among other things, the implementation of alternative systems and procedures for use at coal lease sales. Accordingly, DOE is proposing promulgation of these regulations pursuant to §§ 302(b) and 303(c) of the DOE Act, §§ 2(a), 7(a), and 32 of the MLLA, and §§ 3 and 10 of the MLAAL.

Alternatives Under Consideration

DOE initially proposed three alternative bidding systems: (1) cash bonus bid with a fixed royalty; (2) royalty bid with a fixed bonus; and (3) cash bonus bid with a sliding scale royalty. Also, intertract competition, a bidding procedure, was proposed in these rules. An NPRM was published in

the Federal Register July 10, 1980 (45 FR 46712).

The first bidding system proposed was the cash bonus bid with a fixed royalty. Under this system, the royalty rate is fixed in advance of the sale at not less than 12.5 percent and firms bid a cash bonus (a lesser royalty rate may be allowed in the case of coal removed by underground mining operations). The highest cash bonus bid for a tract wins the lease, provided the bid exceeds a minimum level (established by the U.S. Geological Survey prior to the sale). This bidding system is the one historically used in competitive sales of Federal coal leases. This system places heavy emphasis on initial commitment of capital, although this capital commitment requirement has been somewhat alleviated by the provision for deferred payment of the bonus. However, it can discourage participation by smaller companies, which may reduce competition and limit the number of bids per tract. For these and other reasons, bidding systems using contingency (royalty or profit share) payments have received considerable attention.

The second bidding system proposal was the royalty bid with a fixed cash bonus. Under this system, the cash bonus is fixed prior to the sale (at a nominal level) and companies bid on the royalty rate that will apply if the lease is productive. Because royalty bidding deemphasizes the cash bonus, it encourages greater participation by smaller companies. There is no immediate penalty to the bidder for increasing his royalty bid. However, there is a danger inherent in this system that a bidder will increase his royalty bid in an attempt to win the lease only to find that the royalty rate is too high to permit economic development of the resource. In sum, while this system reduces initial financial requirements for engaging in the bidding process, there is a substantial risk that winning royalty bids will be "too high," and will prevent resource development for smaller or marginal reserves.

The third bidding system which DOE proposed was the cash bonus bid with a sliding scale royalty. A sliding scale royalty system also uses a cash bonus bid variable, but the royalty rate that applies for each time period is based on the value of production from the lease during the time period. Several functional relationships are available for calculating the royalty rate: linear, logarithmic, reciprocal, etc. When compared with the cash bonus and fixed royalty systems under similar conditions, the sliding scale systems

tend to reduce the expected cash bonus required to win a lease. Also, when compared to higher-rate fixed royalty systems, the sliding scale system tends to reduce the risk that smaller reserves will not be developed. The reduced cash bonuses should encourage bidding by smaller companies and could entice firms to bid on tracts that would not otherwise receive bids under the traditional systems.

No single system is invariably superior to all other systems over the wide range of economic, geological, and engineering conditions which might be experienced. However, in individual sales, specific sale and tract conditions and the relative importance placed on the various (and competing) legislative and energy policy objectives will dictate the selection of an appropriate bidding system. DOE is, however, considering analyzing further the bidding systems that have as components the royalty bid with a fixed cash bonus and the cash bonus bid with a sliding scale royalty.

Under the intertract competition bidding procedure, which was also being proposed, a greater amount of tracts would be offered for lease sale than are to be leased. Bids are received on all tracts offered for lease sale and are submitted on a standard measure of value, e.g., dollars per ton. Leases are awarded to the highest bidders until the desired level of leasing is achieved, e.g., one million tons. Because only a fraction of the total tracts offered will be leased, bidders are placed in competition not only with each other for a tract, but also with the highest bidders on all tracts that are part of the lease sale. It is believed that an intertract competition procedure will increase competition in leasing and provide a means of selecting tracts for leasing. However, administrative problems may include larger lease sales, more costly environmental impact statements, and tract evaluations for a much larger number of tracts.

Summary of Benefits

Sectors Affected: The coal mining industry, and companies participating in coal lease bidding; the Federal government; and the general public.

DOE anticipates that the regulations will improve the coal leasing program. They are designed to serve several purposes:

- (1) provide a fair return to the Federal Government for its resources;
- (2) increase competition for Federal leases;
- (3) encourage development of coal resources in an efficient and timely manner;
- (4) discourage speculation; and

(5) discourage concentration of holdings.

In addition, they will carry out the intent of the DOE Organization Act, the Mineral Lands Leasing Act, and the Mineral Leasing Act for Acquired Lands, because they will foster competition and implement alternative bidding systems for Federal leases. The public will also benefit if the revised bidding system regulations do a better job of meeting the stated objectives.

Summary of Costs

Sectors Affected: Companies participating in coal lease bidding; and DOI.

DOE anticipates no significant additional costs as a result of this regulation. Administrative costs may increase slightly if the intertract competition bidding procedure is used. Also, the Department of the Interior has indicated that the U.S. Geological Survey, prior to actual use of a sliding scale royalty in a lease sale, will analyze the administrative costs associated with that system.

Related Regulations and Actions

Internal: Coal production goals which have been developed by the Leasing Policy Development Office and which are currently being updated to reflect synfuels development.

External: Regulations of the Department of the Interior regarding coal leasing, 43 CFR Part 3500.

Active Government Collaboration

The Department of the Interior and the Department of Justice.

Timetable

Final Rule—December 15, 1980.

Final Rule Effective—January 1, 1981.

Available Documents

NPRM—45 FR 46742, July 10, 1980.

Public Comments on NPRM.

We have prepared a Regulatory Analysis entitled "Coal Bidding Systems Regulations," and it is available, along with the proposed regulation, from the Agency Contact listed below.

All documents are available in the DOE Freedom of Information Reading Room, Forrestal Building, Room GB-142, 1000 Independence Avenue, S.W., Washington, DC 20585.

Agency Contact

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

Solar Energy and Energy Conservation Bank (24 CFR 1800 et seq.)

Legal Authority

The Energy Security Act, Title V (The Solar Energy and Energy Conservation Act of 1980), P.L. 96-294, June 30, 1980.

Reason for Including This Entry

The Department of Housing and Urban Development (HUD) includes this entry because it is a precedent-setting action in the area of energy conservation, with expected economic effects considerably in excess of \$100 million per year, and because it is of considerable public interest.

Statement of Problem

The purpose of the Solar Energy and Energy Conservation Act is to encourage investments in energy conservation and solar energy and thereby reduce the Nation's dependence on foreign oil. The Solar Energy and Energy Conservation Bank (henceforth "Bank") is to be established as a separate entity within the Department of Housing and Urban Development to attain the objectives of the Act by providing subsidies covering a portion of the cost of energy-related investments, with the remainder of the cost financed through conventional channels.

Alternatives Under Consideration

Currently, tax incentives form the bulk of government aid to solar energy and energy conservation investments. While many taxpayers have taken the "energy credits" on their federal income tax returns, most of the impact has been on middle and upper income taxpayers. The Act provides for a new system of direct Federal grants to purchasers of energy-saving equipment to cover a portion of the investment. The remainder of the cost is financed through conventional channels. Subsidies and program requirements differ between the energy conservation program and the solar energy program, so that while there is some similarity of approach, the programs and the alternatives under the programs should be considered separately. While there are many program design alternatives, the Regulatory Analysis will focus on (1) the eligibility of program participants (Congress specified a schedule relating family income to the allowable subsidy, and the main question here is which income groups should obtain subsidies), (2) the eligibility of solar and energy

conservation investments for funding (that is, which kinds of equipment are eligible, with what technical specifications), and (3) the amount of subsidy allowable for each project.

Summary of Benefits

Sectors Affected: Building contractors; owners and tenants of residential buildings; commercial buildings not primarily used for manufacturing; certain agricultural buildings; banks and credit agencies; manufacturers of solar energy equipment; and the general public.

Estimates of aggregate benefits from the Regulatory Analysis are not yet available, but our preliminary estimate is that the program will be cost effective, with benefits exceeding costs. The Regulatory Analysis (under preparation) should allow for much more refined benefit and cost estimates which vary across program alternatives.

Qualitatively, building contractors will benefit from increased numbers of conservation investments, and banks and credit agencies will benefit from higher loan demand. Owners of buildings will be assisted in making investments which will lower heating and cooling costs for their buildings. This in turn will generate a lower demand for energy, and hence a lower demand for imported oil. We expect the solar energy program to stimulate the solar equipment manufacturing industry and provide a large scale demonstration of the feasibility of solar improvements in many sections of the United States.

Summary of Costs

Sectors Affected: The Federal Government, primarily HUD.

Overall program authorization calls for HUD to provide \$200 million, \$625 million, \$800 million, and \$875 million in fiscal years 1980 through 1983, respectively, for the purpose of grants under the energy conservation program. Authorizations for solar energy systems are \$100 million, \$200 million, and \$225 million in fiscal years 1980 through 1982. Any program of this magnitude involves start-up costs and costs of administering the program. We have taken steps to minimize these costs in the program design, and minimize the compliance costs of those eligible for program participation.

Related Regulations and Actions

Internal: None.

External: DOE regulations governing other parts of the Energy Security Act.

Active Government Collaboration

The Board of Directors of the Bank will consist of the Secretary of Housing

and Urban Development, the Secretary of Energy, the Secretary of the Treasury, the Secretary of Agriculture, and the Secretary of Commerce.

Timetable

NPRM—None.

Interim Rule—December 1980.

Public Comment Period—60 days following publication of Interim Rule.

Draft Regulatory Analysis—Will accompany Interim Rule.

Final Rule—July 1981.

Final Regulatory Analysis—Will accompany Final Rule.

Available Documents

None.

Agency Contact

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Fuel Economy Standards for Model Year 1983-85 Light Trucks (49 CFR Part 533*)

Legal Authority

Motor Vehicle Information and Cost Savings Act, § 502(b), 15 U.S.C. § 2002.

Reason for Including This Entry

The National Highway Traffic Safety Administration (NHTSA) thinks this rule is important because of its impact on the automotive industry, the public, and energy consumption.

Statement of Problem

In 1978, roughly half of the total petroleum consumed in the United States was used for transportation. The light truck fleet, which includes vehicles such as conventional pickups and vans, consumed approximately 20 percent of that amount. During the past 10 years, light truck sales have grown dramatically. Sales recently have declined, in part because of the poor gasoline mileage of these vehicles and the rising price of gasoline. Nevertheless, we expect light trucks to account for 20 percent of all vehicle sales annually because of the demand for multi-use vehicles. Such sales mean that light trucks will continue to consume substantial amounts of fuel.

Congress set fuel economy standards for passenger cars for model years 1978 to 1980 and 1985 and thereafter, and directed NHTSA to establish standards for model years 1981 to 1984. Congress also directed NHTSA to establish standards for light trucks for each model year beginning with 1979. Without fuel economy standards for light trucks, the gap between the improving fuel efficiency of passenger cars and the low fuel efficiency of light trucks would widen, contrary to the national objective of fuel conservation. In response to the Congressional mandate of Title V, Improving Automotive Efficiency, of the Motor Vehicle Information and Cost Savings Act (the Act), NHTSA already has established fuel economy standards for light trucks in the 1979 to 1982 model years. NHTSA published the 1982 model year standard in the *Federal Register* on March 31, 1980 (45 FR 20871) and has proposed that standards be established for 1983 to 1985.

Alternatives Under Consideration

The final fuel economy standards for light trucks for model years 1983 to 1985 must satisfy the statutory criterion for maximum feasible average fuel economy and must reflect consideration of technological feasibility, economic practicability, the impact of other Federal standards for motor vehicles, and the Nation's need to conserve energy. Based on the results of the Agency's preliminary Regulatory Analysis, we have proposed the following ranges of possible fuel economy improvement for 1983 to 1985 model years.

Proposed Fuel Economy Standards for Light Trucks in 1983-85 Model Years

Model year	Vehicle miles per gallon (mpg)	
	Two-wheel drive	Four-wheel drive
1983	18.0-20.0	15.6-18.0
1984	18.9-21.4	16.1-19.3
1985	19.7-22.4	16.2-19.9

NHTSA is also considering the possibility of a combined two-wheel drive and four-wheel drive standard. This would provide additional flexibility to the manufacturers in terms of where to make investments and how they want to meet the standard.

Summary of Benefits

Sectors Affected: Buyers of new light trucks; the general public; and suppliers of materials and components that improve fuel efficiency.

NHTSA estimates that the new fuel economy standards for model year 1982 light trucks and the standards proposed for light trucks in the 1983 to 1985 model years will save between 11 billion and 17 billion gallons of gasoline more than the standards for model year 1981 light trucks. The Nation could save between \$3.5 billion and \$5.1 billion in 2005 (at the July 1979 price of \$23 per barrel for imported oil). The buyer of a 1985 model year truck meeting the proposed fuel economy levels would save between \$510 and \$1,120 (1979 dollars) over the life of the vehicle, compared to a buyer of a truck meeting the 1981 model year standards. Components for new vehicles, such as computerized controls to improve engine efficiency, may be installed. Thus, there would be greater demand for these items.

Summary of Costs

Sectors Affected: Manufacturers of light trucks; suppliers of materials and components which reduce energy efficiency; buyers of new light trucks; petroleum production and refining; and State and local governments.

NHTSA is developing detailed information on the costs associated with these fuel economy standards. Based on preliminary information, the Agency estimates that the average retail price of a model year 1985 vehicle, compared to a model year 1981 vehicle, would increase by \$350 to \$615 (1979 dollars) per vehicle. However, the two major economic issues in this rulemaking are the marketability of new, more fuel-efficient models and the financial capability of the industry to produce these new models.

The general economic effect would probably be as follows. Vehicle manufacturers would incur increases in capital expenditures and variable manufacturing costs to implement technologies for fuel efficiency. The absolute amount of such increases depends upon the level of the standards. We expect costs to range from \$3.9 billion to \$4.3 billion (1979 dollars). Material suppliers would experience changes in demand. For example, the substitution of aluminum for steel would increase the demand for aluminum and reduce the demand for steel. The petroleum industry would face a reduced increase in demand for gasoline. State and local governments would face a lower rate of increase in revenue from gasoline taxes due to a decrease in the rate of growth of the demand for gasoline. The initial purchase price of light trucks may increase due to potentially higher manufacturing costs.

NHTSA does not anticipate that the standards will have a significant effect on employment. The effect of the standards on the Gross National Product (GNP), inflation, and urban areas will depend directly on the price and availability of gasoline and on the level of fuel economy set in the standards.

Related Regulations and Actions

Internal: NHTSA has already issued standards for fuel economy for light trucks in model years 1979 to 1982 (49 CFR 533*).

External: The Environmental Protection Agency (EPA) has issued regulations governing how fuel economy in motor vehicles is to be measured (40 CFR 600). EPA also has issued regulations governing emissions from light trucks (40 CFR 86). The Federal Trade Commission has issued guidelines governing the advertising of fuel economy for motor vehicles (16 CFR 259).

Active Government Collaboration

NHTSA coordinates its program for fuel economy standards principally with the Department of Energy and the Environmental Protection Agency. NHTSA also reviews the program with the Council on Wage and Price Stability.

Timetable

Regulatory Analysis—Will accompany Final Rule.

Final Rule—November or December 1980.

Available Documents

NPRM—44 FR 77199, December 31, 1979.

Preliminary Regulatory Analysis.

NHTSA Docket No. FE 78-01; Notice 1.

All documents available for review in the Docket Section, NHTSA, Room 5108, 400 Seventh Street, S.W., Washington, DC 20590.

Agency Contact

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FEDERAL ENERGY REGULATORY COMMISSION

High-Cost Natural Gas Produced from Wells Drilled in Deep Waters

Legal Authority

Natural Gas Policy Act of 1978, 15 U.S.C. § 3317.

Reason for Including This Entry

This rule will encourage production of natural gas from unconventional sources by setting an incentive price for one source of such gas—gas from wells drilled in deep water. "Unconventional" or "high-cost" gas, gas produced from geologic formations or under other conditions that make it especially expensive or risky to produce, represents an important and abundant domestic energy resource and can help in our national efforts to reduce dependence on foreign fuels.

Statement of Problem

The Natural Gas Policy Act of 1978 (NGPA) placed all sales of natural gas by producers under Federal jurisdiction and set a series of gradually escalating prices for recently discovered or "new" natural gas which more closely approximated the higher costs of alternate fuels at the time the Act was passed. These prices were intended to stimulate production and to smooth the transition to deregulation of most new gas which was set for January 1, 1985 by the NGPA.

Unconventional gas, while abundant, can be discovered and produced only at extraordinary risk or cost. The Natural Gas Policy Act of 1978 (NGPA) specifies certain categories of unconventional gas eligible for an incentive price, that is, a selling price higher than the prices for conventional gas set by Congress and high enough to make recovery of this gas economically feasible. Under § 107(c)(5), the NGPA gives the Federal Energy Regulatory Commission authority to designate other categories of natural gas as unconventional.

In a Notice of Inquiry issued on June 13, 1979, the Commission requested that the public suggest categories of gas which might qualify under § 107(c)(5) for an incentive price as high-cost or high-risk gas. This rulemaking is an outgrowth of the comments received in response to the Notice of Inquiry. All commenters agreed the production of gas from submerged acreage becomes more costly as offshore production moves seaward. Costs and risks escalate rapidly because specially designed exploratory vessels, drilling and production platforms, and other equipment are required.

The purpose of this rule would be to encourage the development and production of one type of unconventional gas—gas produced from wells drilled in deep water—with an incentive price.

Alternatives Under Consideration

The Commission has proposed an incentive price of 150 percent of the otherwise applicable maximum lawful price for gas produced from water 500 feet deep or deeper. Under the proposed regulations, to qualify for the incentive price, surface drilling of the well must have been commenced on or after May 28, 1980. The Commission proposes to qualify submerged acreage in blocks conforming to the blocks leased by the Department of Interior (DOI) by reference to the 500-foot contour line on National Oceanic and Atmospheric Administration (NOAA) maps.

The Commission specifically solicited public comment on the incentive price necessary to encourage production of natural gas produced from deep water and on depth at which an incentive price becomes necessary.

The Commission is considering several alternatives. The Commission could:

- (A) vary the incentive price;
- (B) vary the depth at which drilling is eligible for the incentive price;
- (C) establish several depths and set corresponding graduated incentive prices;
- (D) take no action.

Comments on the proposed rule and continued staff analysis are expected to provide information on the relative merits of each alternative.

Summary of Benefits

Sectors Affected: Natural gas producers; natural gas users; and the general public.

An appropriate incentive price should permit producers to develop natural gas from wells drilled in deep water on submerged acreage that has already been leased. The pace at which additional development will proceed and the additional volumes of gas that will be produced are not quantifiable. The benefits to natural gas users and the general public of increased domestic supplies of natural gas—a clean, environmentally benign fuel—and the possibility of a concomitant reduction in imports of foreign fuels are likewise not precisely quantifiable.

Summary of Costs

Sectors Affected: Natural gas producers; natural gas users; and the general public.

If the incentive price finally adopted is lower than that necessary to encourage production from deep-water wells, producers will be discouraged from recovering deep-water gas, less gas will be available to domestic consumers and we will not, therefore, be able to displace that amount of imported fuel. Conversely, if a higher than necessary price is adopted, consumers will pay unnecessarily high prices for the additional gas.

Related Regulations and Actions

Internal: The Commission is considering other categories of gas which may be eligible, as high-cost or high-risk gas, for an incentive price.

External: None.

Active Government Collaboration

The Commission worked with the Department of Interior to develop a method of designating qualified acreage.

Timetable

Final Rule—December 31, 1980.

Final Rule Effective—December 31, 1980.

Rehearing Decision—To be determined.

Regulatory Analysis—The FERC is an independent regulatory agency and is not required to prepare the Regulatory Analysis prescribed in E.O. 12044. However, the FERC performs essentially the same analysis for rules of major importance, the results of which are reported in the orders issuing NPRMs and final rules.

Available Documents

NPRM—45 FR 47863, July 17, 1980 (Docket No. RM80-38).

The comments filed on this proposed rule are available to the public at the Commission's Division of Public Information, Room 1000, 825 N. Capitol St., N.E., Washington, DC 20426.

Agency Contact

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FERC

High-Cost Natural Gas: Production Enhancement Procedures (18 CFR Part 271, Subpart G*)

Legal Authority

Natural Gas Policy Act of 1978, 15 U.S.C. § 3317.

Reason for Including This Entry

This rule will encourage production of reserves of natural gas which are recoverable only by application of techniques to enhance production which are often too costly to apply at the prices available.

This, along with other categories of "unconventional" or "high-cost" gas, gas produced from geologic formations or under other conditions that make it especially expensive or risky to produce, represents an important and abundant domestic energy resource and can help to reduce imports of foreign fuels.

Statement of Problem

The Natural Gas Policy Act of 1978 (NGPA) placed all sales of natural gas by producers under Federal jurisdiction and set a series of gradually escalating prices for recently discovered or "new" natural gas which more closely approximated the higher costs of alternate fuels at the time the Act was passed. These prices were intended to stimulate production and to smooth the transition to deregulation of most new gas which was set for January 1, 1985 by the NGPA.

Unconventional gas, while abundant, can be discovered or produced only at extraordinary risk or cost. The NGPA specifies certain categories of unconventional gas eligible for an incentive price, that is, a selling price higher than the prices for conventional gas established by Congress and high enough to make recovery of these reserves economically feasible. Section 107(c)(5) of the NGPA gives the Commission authority to designate other categories of natural gas as unconventional.

In a Notice of Inquiry issued on June 13, 1979, the Federal Energy Regulatory Commission requested that the public suggest categories of gas which might qualify under § 107(c)(5) as high-cost or high-risk.

This rulemaking is an outgrowth of the comments received in response to that Notice of Inquiry and a petition filed by the Sun Gas Company requesting the Commission to classify gas produced as a result of production enhancement procedures as high-cost. This petition was supported by other natural gas producers and environmental groups such as Friends of the Earth and the Environmental Policy Center.

Production enhancement procedures often become necessary in order to maintain or to increase production from a depleting well or a well in which production has become marginal. Production supply enhancement procedures eligible under the proposed

rule include: (1) re-entry into a well which has been plugged and abandoned; (2) re-entry into a well in order to drill deeper or start a side shaft; (3) re-perforation of the well casing or perforation into a separate gas-producing zone; (4) repair or replacement of a faulty or damaged casing or related equipment in the well; (5) acidizing, fracturing, or installation of compression equipment. Current regulations do not allow sufficient flexibility to contracting parties to amend, modify or renegotiate contracts in order to provide for production enhancement work.

The purpose of this rule is to set a ceiling or maximum price which may be paid by a purchaser and which is high enough to encourage production of reserves of natural gas recoverable only if production enhancement procedures are applied.

Alternatives Under Consideration

The Commission has proposed that gas produced with supply enhancement procedures applied after May 29, 1980 be eligible for an incentive price as high as the price for gas under § 109 of the NGPA. (In August, 1980, the price for § 109 gas was \$1.72 per million Btu's.) A negotiated contract price must be in effect to ensure that the price for qualified production enhancement gas is set by agreement of all the contract parties. The Commission has also proposed a formula limiting the unit cost of production that results from enhancement procedures so that incremental revenues are not excessive.

The Commission specifically solicited comments on what constitutes a reasonable incentive price and whether other production enhancement techniques should be eligible for the incentive. The Commission also requested any information on the types of supply enhancement projects that will not be undertaken unless the ceiling is even higher than the § 109 price.

The Commission will consider in a separate proceeding whether gas subject to § 104 (gas already dedicated to interstate commerce when the NGPA was enacted) and § 106 (natural gas subject to both interstate and intrastate "rollover" contracts) of the NGPA should be eligible for the incentive price if supply enhancement procedures are necessary to maintain production.

Summary of Benefits

Sectors Affected: Natural gas producers; natural gas users; and the general public.

Large volumes of gas remain in mostly depleted or faulty wells, although it is impossible to estimate the amount. An

appropriate incentive price should allow producers to tap reserves of natural gas recoverable only through supply enhancement procedures. The benefits to natural gas users and the general public of increased domestic supplies of natural gas—a clean, environmentally benign fuel—and the possibility of a concomitant reduction in imports of foreign fuels are not precisely quantifiable.

Summary of Costs

Sectors Affected: Natural gas producers; natural gas users; the general public; State jurisdictional agencies; and the Commission.

If the incentive price finally adopted is lower than that necessary to encourage production of reserves recoverable through supply enhancement procedures, these reserves may be left in the ground and therefore, natural gas users and the economy will not benefit from the increased domestic supply. If an incentive price that is higher than necessary is adopted, consumers will pay unjustified prices for the additional gas.

Workload will be increased at the Commission and at the State jurisdictional agencies in order to determine that the supply enhancement work for which the incentive price is claimed has actually been performed and that such work is in fact necessary to produce the gas.

Related Regulations and Actions

Internal: The Commission is considering other categories of gas which may be eligible, as high-cost or high-risk gas, for an incentive price.

External: None.

Active Government Collaboration

None.

Timetable

Final Rule—October 28, 1980.

Rehearing Decision—To be determined.

Regulatory Analysis—The FERC is an independent regulatory agency and is not required to prepare a Regulatory Analysis as prescribed in E.O. 12044. However, the FERC performs essentially the same analysis for rules of major importance and reports the results in the orders issuing NPRMs and final rules.

Available Documents

NPRM—45 FR 51219, August 1, 1980 (Docket No. RM80-50).

Sun Gas Petition for Rulemaking (Docket No. RM80-41).

Final Rule—October 28, 1980.

The comments filed on this proposed rule are available to the public at the Commission's Division of Public Information, Room 1000, 825 N. Capitol Street, N.E., Washington, DC.

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FERC

Procedures Governing Applications for Special Relief Under Sections 104, 106, and 109 of the Natural Gas Policy Act of 1978 (18 CFR Parts 2* and 271*)

Legal Authority

Natural Gas Policy Act of 1978, 15 U.S.C. § 3301 *et seq.*; Department of Energy Organization Act, 42 U.S.C. § 7107 *et seq.*; Natural Gas Act, as amended, 15 U.S.C. § 717 *et seq.*; E.O. 12009, 3 CFR, 1977-78 Comp., p. 142.

Reason for Including This Entry

These proposed regulations would encourage producers of these categories of natural gas to undertake new production or production enhancement projects not otherwise economically feasible. These regulations will cover natural gas production costing millions of dollars annually.

Statement of Problem

The Natural Gas Policy Act of 1978 (NGPA) established a maximum lawful price (MLP) for any first sale of natural gas. The proposed regulations are important in that they would implement the Federal Energy Regulatory Commission's (Commission) authority under the NGPA to set prices higher than the MLP for three categories of gas sales, namely: first sales of gas committed or dedicated to interstate commerce on the day before the date of enactment of the NGPA, first sales of gas under rollover contracts, and first sales of gas not covered by any MLP under any other section of the NGPA. ("First sale" is a term indicating that the sale is subject to the terms of the NGPA and is therefore eligible for NGPA prices. The term does not refer to the first time gas is sold—hence there may be a chain of first sales.) Thus, producers of these categories of natural gas would be encouraged to undertake new production or production enhancement projects not otherwise economically feasible at the MLP specified in the NGPA.

In the past, ceiling prices for producer sales of natural gas were set by the Commission or its predecessor, the Federal Power Commission (FPC), on an area—later a nationwide—basis. These prices were set to cover classes of producers (large or small) and vintage (when the well was drilled or production began). In some instances, however, the ceiling price did not permit a producer to earn a fair profit or, in the extreme case, recover his cost of production. This put the producer face-to-face with two alternatives: continue production at an economic loss, or abandon the well. Neither of these alternatives was in the public interest, as the first affected the producer and would likely discourage further business ventures, and the latter affected the consumer in that it made less gas available. Therefore, regulations called "special relief procedures" were adopted; they allowed producers to apply for prices higher than those set at area or nationwide ceilings.

Passage of the NGPA fundamentally removed the responsibility for establishing ceiling prices from the Commission. The MLP for a particular sale now depends on when the well is drilled, where the gas is produced, and whether it was priced under the earlier practices of the Commission. As part of its general regulatory scheme, however, the NGPA provides that the Commission may set a price higher than that stated in the NGPA for certain types of producer sales; in other words, the Commission may continue to grant "special relief" under the NGPA.

The Commission believes that it is necessary to continue providing producers with the opportunity, in special or unusual situations, to obtain relief from the MLPs. To this end, the Commission has proposed new regulations for granting such relief. The new regulations describe the circumstances under which a producer-seller of natural gas may seek a "special relief" rate, the manner in which the seller may apply for the rate, the process by which the Commission will consider an application, and the cost standards which the Commission will use to determine a special relief rate.

Alternatives Under Consideration

In providing regulations to govern the application for, and granting of special relief under, the NGPA, the Commission must determine which of the various categories of natural gas that are priced under the NGPA will be eligible for the relief, and on what basis it will grant the relief. There are alternatives for both of these questions.

The Commission has the authority to grant special relief for the three above-

discussed categories of natural gas sales. It does not, however, have authority to grant special relief for the remaining five categories of natural gas sales defined in the NGPA, namely: new natural gas and certain natural gas produced from the outer continental shelf; natural gas produced from new, onshore production wells; natural gas sold under existing intrastate contracts; certain high-cost natural gas; and stripper well natural gas (wells which produce at very low rates). However, the NGPA could be read to permit a price higher than the MLP for these categories under circumstances which might be considered as warranting "special relief." The Commission is, therefore, considering other rulemaking procedures to encompass some or all of these categories.

Also under consideration is the advisability of an upper limit or "cap" on special relief. The Commission has requested comments on this issue, and a related one: If a "cap" is indeed advisable, what should it be?

One of the more complex problems in establishing a rule for special relief is the criteria by which the Commission should determine a special relief rate. Under the old special relief rules a producer could recover either out-of-pocket expenses or a rate sufficient to provide a fair return on past and future costs, including any extra investment he had to make. The new regulations, while simplifying the standards by providing a formula approach, also distinguish between a producer who must undertake an important investment to make his well economically productive, and one who needs no further investment but needs special relief to cover ongoing operating and maintenance expenses.

The most difficult issues concern the rates to be granted to producers making new investment. The Commission must decide what kinds of investment should be recovered and what the appropriate rate of return on investment should be.

The relative pros and cons of alternative standards are extremely complex. In deciding among them, the Commission must balance the impact of each alternative against the practicalities of producer regulation, the supplies affected, the administrative difficulty (or simplicity) of the regulations, and the intent of the NGPA.

Summary of Benefits

Sectors Affected: The Commission; natural gas production; natural gas pipelines; and natural gas consumers.

This proceeding will directly benefit producer-sellers of natural gas. It will provide the sellers with an opportunity

to petition for maximum lawful prices greater than those explicitly set forth under the NGPA. This is important for those sellers who might incur real economic harm or hesitate to undertake new projects because the costs to produce their gas exceeds the MLP they could get for the gas under the NGPA.

In addition, the proceeding will benefit the pipelines that purchase the gas and the ultimate consumers. The benefits will be in the form of added supplies of natural gas—a clean, environmentally benign fuel—which would otherwise never reach the market. These added supplies may permit a reduction in imports of foreign fuels.

Summary of Costs

Sectors Affected: The Commission; natural gas producers and sellers; natural gas pipelines that purchase the gas; and natural gas consumers.

The procedures to allow special relief applications will add to administrative time and costs at the Commission. The number of petitions for special relief that may be filed cannot be determined at this time and will depend upon many variables, including general economic trends and the particulars of individual cases. About 50 to 60 cases per year were administered under the old special relief procedures. This would be a realistic estimate for cases filed under the proposed regulations.

The new procedures of the proposed rule should result in a more economical use of the Commission's time. Thus, administrative costs should be lower than under prior practices. However, about 130 requests for special relief are now pending. These cases, originally filed under the old procedures, form a backlog requiring immediate administrative action under the new procedures.

The granting of a special relief rate means that a producer can receive a higher price for the sale of his gas. This higher price can be passed through to the ultimate consumer. The exact magnitude of this effect is unknown but could well reach millions of dollars annually.

Related Regulations and Actions

Internal: Regulations implementing the Natural Gas Policy Act.

External: None.

Active Government Collaboration

None.

Timetable

Final Rule—December 1980.
Rehearing Decision—To be determined.

Regulatory Analysis—The FERC is an independent regulatory agency and is not required to prepare the Regulatory Analysis prescribed in E.O. 12044. However, the FERC performs essentially the same analysis for rules of major importance and includes the results in the orders issuing NPRMs and final rules.

Available Documents

NPRM—44 FR 49468, August 23, 1979 (Docket No. RM79-67).

Notice Granting Extension of Time to Comment—44 FR 53759, September 17, 1979 (Docket No. RM79-67).

Notice of Public Hearing, issued October 13, 1979 under Docket No. RM79-67.

Notice of Request for Public Comments and Notice of Public Discussion, 45 FR 5321, January 23, 1980 (Docket No. RM79-67).

Transcripts of public hearings and public discussions, and written comments are available at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, DC 20426

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FERC

Rate of Return: Electric

Legal Authority

Federal Power Act, 16 U.S.C. §§ 824, 824d, 824e, (Supp. 1979) and 42 U.S.C. § 712(a)(1)(B) (Supp. 1979).

Reason for Including This Entry

The Federal Energy Regulatory Commission has initiated a rulemaking to examine the possibilities for expediting the determination of an appropriate rate of return for electric utilities selling wholesale electric power. This rulemaking could result in a new procedure for setting the rate of return.

Statement of Problem

Electric utilities finance construction in the same manner as other businesses, that is, with a mixture of borrowed and investor funds. In general, the ratepayers do not finance construction or system upgrading. For this reason, the utilities must be allowed a sufficient rate of return on investment so that they

can attract investors and raise capital for construction.

Many local electric utilities do not own facilities to generate power and confine their operations to the distribution of electric power bought at wholesale. Under the Federal Power Act of 1935, the Federal Energy Regulatory Commission sets the rates for these wholesale power transactions. The FERC regulates rates charged by 211 electric utilities for wholesale sales of electricity—about 13 percent of total annual sales of electricity in the U.S.

Because many rate increases filed by electric utilities subject to the FERC's jurisdiction are contested by customer utilities, in order to determine an appropriate rate of return, extensive evidence must be taken in a trial-type hearing before an administrative law judge. The rate of return issue is essentially considered anew in each contested rate case.

In a special report to Congress ("Decisional Delay in Wholesale Electric Rate Increase Cases: Causes, Consequences and Possible Remedies," January 23, 1980), FERC Chairman Charles Curtis spoke of the Commission's large and growing electric rate caseload and the length and complexity of electric rate cases. At that time, he suggested that the Commission should work to develop alternative methods for determining the rate of return, perhaps the most time consuming of the elements in a rate case.

Although the capital structure, business organization, and financial condition of electric utilities vary widely, there are enough similarities to suggest that a more general approach to rate of return questions might be possible.

Alternatives Under Consideration

The Commission has three basic alternatives to consider in determining a method for setting the rate of return for electric utilities. First, the Commission could continue the current practice, determining rate of return on a case-by-case basis. This method is geared to individual company requirements, and extremely complex issues of corporate finance and economic market conditions are considered. The advantage of this method is that these requirements can be carefully weighed and a finely tailored result produced. However, this alternative involves a large commitment of FERC resources and is an extremely lengthy process.

As a second alternative, the Commission could develop a general approach for determining an appropriate return. Within this general approach, there are a number of procedural

options. The Commission could establish a basic formula for determining the rate of return. Or, the Commission could adopt a specific rate of return or a "zone of reasonableness," a limited range within which a rate of return could be set. This rate or zone of rates would be applicable to all utilities under the FERC's jurisdiction. While the results of a generic approach may not be as precise as those produced by a case-by-case approach, it is possible that the savings in litigation costs may offset any benefits to be gained from such precision.

A third alternative would involve setting specific guidelines for setting rate of return on a case-by-case basis. With this alternative, the Commission could speed up rate cases while retaining the advantages of examining each company's structure and capital requirements.

Summary of Benefits

Sectors Affected: Electric utilities selling power at wholesale; investors in those utilities; electric utilities purchasing power at wholesale; ultimate consumers of electricity; and the Commission.

Shortening the time to decide rate of return issues and simplifying the processes involved could benefit consumers by saving administrative costs in all sectors. Given the Commission's growing caseload, speeding up determination of rate of return, along with other measures to expedite the resolution of rate cases, should allow the Agency to stay abreast of new filings and clear up current backlog.

The Federal Power Act permits the Commission to suspend rate increases for only 5 months before the new rates become effective, while 2 to 3 years are often necessary to evaluate and act on rate cases. This means that the utilities collect rates that may be excessive for long periods of time. Although these rates are collected subject to refund and utilities must make refunds with interest if required, this is nevertheless an inconvenience to consumers and contributes to uncertainty about electric rates. Speeding up the determination of rate of return would reduce this burden on consumers.

Finally, speeding up the determination of rate of return might give investors more confidence in utilities, reduce regulatory risk, and thus lower the costs to utilities of raising capital for construction and system improvements, costs which are passed on to consumers in rates. Speedier case resolution also should assure investor returns more

commensurate with allowed returns, particularly in inflationary periods.

Summary of Costs

Sectors Affected: Electric utilities selling power at wholesale; investors in those utilities; electric utilities purchasing wholesale power; and ultimate consumers of electricity.

Depending on which alternative the Commission selects and how the Commission decides to implement the method selected, there may be costs to one or more of the sectors involved. A high rate of return would result in higher costs to consumers. Conversely, a low rate would reduce rates to consumers. The method selected may also affect investor interest in individual utilities and utilities in general, influencing the cost of capital.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

NPRM—To be determined.

Final Rule—To be determined.

Rehearing Decision—To be determined.

Regulatory Analysis—The FERC is an independent regulatory agency and is not required to prepare a Regulatory Analysis as prescribed in E.O. 12044. However, the FERC performs essentially the same analysis for rules of major importance and includes the results in the orders issuing NPRMs and final rules.

Available Documents

None.

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FERC

Regulations Governing Applications for Major Unconstructed Projects (18 CFR Part 4*)

Legal Authority

Federal Power Act, 16 U.S.C. § 791a *et seq.*; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 2601 *et seq.*

Reason for Including This Entry

This rulemaking is important because it simplifies and clarifies licensing requirements and procedures for major projects yet to be constructed, thereby making the development of new sources of hydroelectric power generation—a renewable energy resource with great undeveloped potential—more attractive and efficient.

Statement of Problem

This rulemaking is the third phase of the Federal Energy Regulatory Commission's (FERC) licensing reform program for all projects built for the generation of electric energy by water power that are within the Commission's jurisdiction.

Section 405 of the Public Utility Regulatory Policies Act of 1978 (PURPA) charges the Commission to establish simple licensing procedures for water power projects which are connected with existing dams and have a capacity to generate 15 megawatts (20,000 horsepower) or less of electricity at any one time. The Commission is extending this reform effort to licensing procedures for all water power projects. As a result, this rulemaking proposes licensing reforms which deal with all "major" projects (those with a generating capacity of more than 1.5 megawatts or 2,000 horsepower) (1) for which there is no dam or impoundment (body of water impounded by a dam) at the time of the application, or (2) which would result in a significant increase in the normal surface elevation of an existing impoundment, or (3) which are otherwise determined, pursuant to the Commission's regulations implementing the National Environmental Policy Act of 1969 (NEPA), to have a potentially significant environmental impact.

The current requirements governing licensing of major water power projects are to be found in various sections of the Commission's regulations. An applicant may be required to submit information in as many as 23 different exhibits within each application. Frequently, the existing regulations do not explain in sufficient detail what information applicants must submit. This can result in duplicate filings or deficient applications. The revision of the regulations governing major unconstructed projects where no dam or impoundment has been built will consolidate and simplify the information required of any applicant in order to elicit only that information which is relevant to an informed decision on the merits of the application.

Projects of the magnitude covered by this rulemaking naturally result in more

significant environmental disturbances than other, smaller water power projects. The Commission will therefore require any applicant for a major unconstructed project to file an Environmental Report of considerably greater depth and detail than it will require for smaller projects or projects at existing dams. The Commission is also revising its NEPA regulations that set forth the specifications of an Environmental Report for all projects, and is tailoring the requirements for such reports to the type of water power project for which the applicant seeks a license. The need for relatively greater detail concerning such projects also extends to information relating to their structural and financial integrity.

Alternatives Under Consideration

The Commission is not required by PURPA to reform its licensing procedures for hydroelectric projects that are not connected with existing dams. Nevertheless, the FERC has previously reformed hydroelectric licensing procedures outside the scope of PURPA, and this rulemaking accordingly extends to major unconstructed projects the benefits of the simplified licensing program.

The Commission must determine how it will revise the licensing procedures, and decide which of the current reporting requirements to simplify and consolidate. For example, the Commission must determine how extensive the Environmental Report for such projects must be. Because construction of a dam involves flooding land permanently and for the first time and the impacts of extensive construction activity, more environmental detail will be needed to assess the environmental impacts of such a project than is needed for projects where the dam already exists. The Commission will also revise its NEPA reporting requirements to require an Environmental Impact Statement for all such projects.

Summary of Benefits

Sectors Affected: The Commission; State, municipal, and private developers of major unconstructed hydroelectric power projects within the jurisdiction of the Commission; consumers of hydroelectric power; and the general public.

Better licensing procedures should expedite the licensing of water power projects, thus encouraging hydroelectric development. This in turn may help replace costly imported energy supplies with this cheap, renewable energy resource.

Additional hydroelectric facilities will mean that more consumers will have access to hydropower. This may create greater stability in the cost of electricity to consumers. It may even result in lower rates for electric power.

The improved regulations will help conserve the manpower and financial resources of both the Commission and the hydroelectric facility applicants, because the regulations will be more understandable and more reasonable in their requirements. As a result, developers may file fewer deficient applications which require upgrading, and both developers and the Commission may waste less time interpreting and litigating the regulations.

By obtaining more complete environmental data, the improved regulations should also enable the Commission to better fulfill its obligations under NEPA to identify and minimize adverse environmental disturbances. The public will benefit because development of hydropower will be more attractive and adverse environmental impacts will be minimized.

Summary of Costs

Sectors Affected: State, municipal, and private developers of major unconstructed hydroelectric power projects within the jurisdiction of the Commission.

This proposal will require an applicant for a license to construct a major project to file with the Commission a more detailed Environmental Report than is required for smaller projects or for projects at existing dams. The Commission will also require greater specificity regarding the structural and financial integrity of these projects. This will create an additional reporting burden for major project developers. The burden should not discourage them from applying for licenses, however, in light of the significant improvements in the other licensing procedures.

Related Regulations and Actions

Internal: The first phase of the licensing reform program revised the licensing regulations for all "minor" projects (installed capacity of 1.5 megawatts or less) (FERC Order No. 11, 43 FR 40215, September 11, 1978). The second phase revised the regulations for "major" projects (more than 1.5 megawatts of installed capacity) where at least a dam and impoundment are in existence at the time of the application (FERC Order No. 59, 44 FR 67645, November 27, 1979). In conjunction with these reforms, the Commission also

revised its procedural regulations governing licenses and preliminary permits for all water power projects (FERC Order No. 54, 44 FR 61328, October 25, 1979).

The Commission proposed new Regulations Implementing the National Environmental Policy Act of 1969 governing the collection, evaluation, and dissemination of environmental information concerning Commission actions (NPRM, 44 FR 50052, August 20, 1979, Docket No. RM79-76).

External: None.

Active Government Collaboration

None.

Timetable

NPRM—November 1980.

Final Rule—To be determined.

Rehearing Decision—To be determined.

Regulatory Analysis—The FERC is an independent regulatory agency and is not required to prepare the Regulatory Analysis prescribed in E.O. 12044. However, the FERC performs essentially the same analysis and includes the results in the orders issuing NPRMs and final rules.

Available Documents

FERC Order No. 11, 43 FR 40215, September 11, 1978.

FERC Order No. 59, 44 FR 67645, November 27, 1979.

FERC Order No. 54, 44 FR 61328, October 25, 1979.

NPRM, 44 FR 50052, August 20, 1979, Docket No. RM79-76.

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FERC

Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act (18 CFR Part 271, Subpart K*)

Legal Authority

15 U.S.C. § 3320(a) (Supp. II 1978).

Reason for Including This Entry

These regulations will determine who pays for certain services necessary for natural gas production and transportation and how much may be paid for those services.

This rule involves millions of dollars annually in potential revenues to producers and other sellers of natural gas. The Federal Energy Regulatory Commission (FERC), in providing for collection of production-related costs, will establish a workable set of rules for natural gas pricing which may increase deliveries of properly compressed, treated, and processed gas for shipment to ultimate consumers.

Statement of Problem

On December 1, 1978, the Natural Gas Policy Act of 1978 (NGPA) became law. By that law, the Congress established maximum prices for which a producer could sell natural gas. In establishing these prices, the Congress specified that a producer could collect amounts above the maximum lawful prices when the producer incurred particular types of costs, if the Commission approved.

When the NGPA went into effect, the Commission put out interim regulations implementing the Act. Among those regulations were rules defining who could apply to the Commission for production-related costs, what costs could be applied for, and how an application could be made for authorization to collect the add-ons for the costs. The Commission solicited comments on these interim regulations and amended them in July of 1980.

The July 1980 amendments attempted to address three important problems. First, how can the Commission establish a mechanism so that a producer can promptly receive approval to add on to a ceiling price an amount for production-related costs? Second, how can the Commission best respond to the situation in which a pipeline company rather than the producer agrees to incur production-related costs? And third, how can the regulations best be designed to ensure that a producer knows what can be applied for and how to apply?

Alternatives Under Consideration

In implementing the production-related cost section of the NGPA, the Commission has two basic alternatives. It could provide a "simple rule" outlining who can apply, what kinds of production-related costs can be applied for, and how to apply. This was the approach used in the interim regulations first issued to implement the NGPA. That approach was based on a case-by-case determination of cost add-ons and only treated cases in which the producers or other sellers of natural gas incur the production-related costs.

Alternatively, the Commission could establish certain categories of production-related costs that could

automatically be added to a producer's ceiling price and provide for situations when the purchaser, instead of the seller, agrees to incur those costs. In this way, the administration of the program becomes simpler, and both the seller and the purchaser are considered. This was the approach adopted by the Commission in the July 1980 amendments.

In adopting this approach, the Commission decided to proceed step-by-step. First, the regulations were amended to immediately provide that certain minimal types of production-related costs could be automatically added by a producer to a sales price without further administrative action or delay. Second, the two most important types of production-related costs were isolated—costs for gathering natural gas (i.e., collecting it from individual wells and bringing it to a common transporting system) and compressing natural gas (i.e., pressurizing it so that it will move from the gas well to and through a transporting system). An appropriate add-on for these costs will be determined in separate notices of proposed rulemaking so that they too may automatically be added on by sellers.

Third, a policy statement for pipelines that purchase natural gas from producers was issued. This policy describes the types of production-related activities that the Commission will consider for inclusion in the pipeline's rates, further simplifying administrative proceedings.

Finally, FERC would propose a new rule to mark out certain costs that will be considered production costs, as opposed to production-related costs. These costs must therefore be covered by the sales price for the gas, which price cannot exceed the maximum lawful price.

Summary of Benefits

Sectors Affected: Producers and other sellers of natural gas; industry purchasers of natural gas, such as pipelines; and ultimate consumers of natural gas.

All sectors will benefit from a workable and practicable set of rules governing collection of production-related costs.

This rule involves several millions of dollars in potential revenues to producers and other sellers of natural gas. The Commission, in providing for production-related costs, is seeking to establish a workable set of rules for natural gas pricing and to increase deliveries of properly compressed, treated, and processed gas for shipment to consumers.

Summary of Costs

Sectors Affected: Natural gas producers; natural gas purchasers; and natural gas consumers.

Any and every add-on permitted by the Commission to a producer will increase the sale price of natural gas. This price must be paid in all cases by the ultimate consumer of that gas. To the extent that a producer does not get an add-on for a production-related cost, or is delayed in getting the add-on, the producer will incur costs. To the extent that the add-on is permitted, costs will be incurred by natural gas purchasers and, ultimately, paid by natural gas consumers.

The cost involved is sizable but not quantifiable. The amounts involved will be determined by several factors: how many sellers request or receive add-ons; what add-ons are sought; and the amounts of those add-ons. Some measure of the potential impact of the rule can be deduced from the number of producing natural gas wells in the country. There are some 15,000 such wells now in existence, and more being completed every year. There may be production-related costs allowed for most, if not all, of these wells.

Related Regulations and Actions

Internal: Because of the step-by-step process, there are several rulemakings involved. These will include, in addition to the main docket described in this entry, the rulemaking for gathering allowances (to be designated as Docket No. RM80-73), the rulemaking for compression allowances (to be designated as Docket No. RM80-74), and a rulemaking for production costs (to be designated as Docket No. RM80-72). Also, rules considered under Order No. 68, "Final Regulations Under Sections 105 and 106(b) of the Natural Gas Policy Act of 1978," Docket No. RM80-14 (issued January 18, 1980, 45 FR 5678, January 24, 1980), may affect this regulation.

External: None.

Active Government Collaboration

None.

Timetable

Final Rule—Early 1981.

Final Rule Effective—The rule is effective on an interim basis as of July 25, 1980.

Rehearing Decision—To be determined.

Regulatory Analysis—The FERC is an independent regulatory agency and is not required to prepare a Regulatory Analysis as prescribed in E.O. 12044. However, the FERC

performs essentially the same analysis for rules of major importance and includes the results in the orders issuing NPRMs and final rules.

Available Documents

The interim regulations on which this proceeding is based were published in the Federal Register of December 1, 1978 (43 FR 56488).

Amendments to interim regulations, Order No. 94, "Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act," Docket No. RM80-47 (issued July 25, 1980, 45 FR 53099, August 11, 1980).

Transcripts of hearings and comments on the interim regulations are available and may be obtained from the Commission's Division of Public Information, Room 1000, 825 N. Capitol Street, NE., Washington, DC.

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CHAPTER 2—ENVIRONMENT AND NATURAL RESOURCES

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DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Watershed Protection and Flood Prevention Program (27 CFR Part 622*)

Legal Authority

Watershed Protection and Flood Prevention Act of 1954, 16 U.S.C. § 1001 *et seq.*

Reason for Including This Entry

The U.S. Department of Agriculture (USDA) believes this entry is important because it would help achieve maximum reduction in upstream flood damages in an economically and environmentally defensible manner. The proposal emphasizes minimizing adverse impacts on wetlands and prime farmlands and

integrating nonstructural alternatives and water conservation measures into the flood protection measures used in the program.

Statement of Problem

Under the Watershed Protection and Flood Prevention Act, the Secretary of Agriculture may give technical and financial help to sponsoring non-Federal organizations to plan and install watershed projects that prevent erosion, sedimentation, and floodwater damage; to further the conservation, development, use, and disposal of water; and to further the conservation and proper use of land. Sponsoring local organizations consist of units of State and local government. The sponsoring local organizations for a watershed project must have the ability under State statutes to obtain lands for project works of improvement, such as a dam, bear their share of the cost of installation, and operate and maintain the project after installation. Some watershed projects benefit urban areas, but most are located in rural areas. Projects provide benefits such as flood damage reduction, erosion reduction, recreation, irrigation, and water supply and conservation to rural communities and agricultural areas.

The Watershed Protection and Flood Prevention Act of 1954 indicates that works of improvement installed with program assistance are to yield benefits in excess of their costs. Program activities are to be governed by rules and regulations issued by the President. Among other things, E.O. 10584 (December 18, 1954) gives the Secretary of Agriculture responsibility for establishing criteria for the formulation and justification of plans for works of improvement and criteria for the economic and engineering soundness of works of improvement consistent with the provisions of the Act and with policies, rules, and regulations issued by the President.

Executive Order 12044 (March 24, 1978) and the Secretary of Agriculture's Memorandum 1955 require that USDA systematically review the rules and regulations for all programs at regularly specified intervals. In keeping with this requirement, as well as the President's initiatives, and other concerns, the Department of Agriculture has scheduled for review the rules and regulations governing the formulation, implementation, and operation of watershed projects.

Alternatives Under Consideration

USDA will develop and consider alternatives to help resolve issues in each of the problem areas (environment, economic evaluation, equity aspects in terms of the distribution of costs and benefits, and safety aspects), and to improve the performance of the program in achieving its objectives.

The review will consider such things as the appropriate mix of structural (such as dams and stream channel modifications) and nonstructural alternatives (such as purchase and removal of damageable structures or flood plain zoning) to achieve flood control, appropriate levels of protection to achieve national flood damage objectives, and appropriate levels of soil and water conservation and measures to be used to achieve conservation objectives.

Summary of Benefits

Sectors Affected: People living in existing or potential watershed project areas; and State and local governments.

A change in the rules and regulations for the Watershed Protection and Flood Prevention Program could affect people living in rural and urban watersheds of up to 250,000 acres that have erosion, sediment, flood, drainage, irrigation, recreation, or water supply problems. The units of local government that might sponsor a watershed project, and therefore benefit, include the following: soil and water conservation districts; conservancy districts; boards of county commissioners; county councils; water districts; natural resource districts; city, town, and village councils; State departments of natural resources; State fish and wildlife departments; and State park departments.

USDA will analyze the benefits of each regulatory alternative considered for each problem area as a part of the regulatory analysis process. The sectors of the economy and groups to whom the benefits are expected to accrue will also be identified.

Summary of Costs

Sectors Affected: People living in existing or potential watershed project areas; and State and local governments.

Those who pay the costs of watershed projects, both monetary and non-monetary, are generally the members of the same sectors and groups who receive the benefits of the program.

USDA will analyze the costs of each regulatory alternative considered for each problem area as a part of the regulatory analysis process. The sectors

of the economy and groups to whom the costs are expected to accrue will also be identified. Alternatives considered in the regulatory review will include those which would allocate costs commensurate with privately appropriable benefits accruing from the program.

Related Regulations and Actions

Internal: Compliance with NEPA (National Environmental Protection Act), Procedures for Soil Conservation Service (SCS)-Assisted Programs, 7 CFR 650.1.

Compliance with NEPA, Related Environmental Concerns, Flood Plain Management, 7 CFR 650.25.

Support Activities, Compliance with NEPA, Protection of Wetlands, 7 CFR 650.26.

Procedures for the Protection of Archaeological and Historical Properties Encountered in SCS-Assisted Programs, 7 CFR Part 656.

Prime and Unique Farmlands, 7 CFR 657. Describes prime and unique farmlands and States' policies for protecting and preserving them for agricultural use.

External: Principles and Standards for Planning Water and Related Land Resources, Water Resources Council (WRC).

Procedures for Evaluation of Natural Economic Development Benefits and Costs in Water Resources Planning—WRC.

Executive Order 10584, "Rules and Regulations Relating to Administration of the Authority of the Watershed Protection and Flood Prevention Act."

Active Government Collaboration

During the study of rules and regulations for the watershed program, USDA will coordinate applicable changes with the Water Resources Council.

Prior to initiating review of the program, USDA will develop a plan for public participation by public groups, State and local governmental groups, and other Federal agencies.

Timetable

USDA will not complete the review of rules and regulations for the watershed program until the Water Resources Council (WRC) has finalized new procedures for planning and evaluating water resource projects. The present schedule is as follows:

NPRM—April 1981.

Public Comment—60 days following publication of NPRM.

Final Rule—September 1981.

Draft and Final Impact Analyses—Will be available for public

inspection at the time proposed and final rules are published respectively.

Available Documents

Watershed Projects, 7 CFR Part 622, Source: 40 FR 12475, March 19, 1975.

Revision of "Principles and Standards for Planning Water and Related Land Resources," December 1979.

Procedures for Evaluation of National Economic Development Benefits and Costs in Water Resources Planning, December 1979.

Environmental Quality Manual (issued by WRC): 45 FR 64402, September 29, 1980.

Supplement to National Economic Development Manual (issued by WRC): 45 FR 64472, September 29, 1980.

These documents are available from the Agency Contact listed below.

Agency Contact

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Regulations Implementing a Fishery Management Plan for the Groundfish Fishery for the Bering Sea/Aleutian Island Area

Legal Authority

The Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. § 1801 *et seq.*

Reason for Including This Entry

The Department of Commerce (DOC) believes these regulations are of significant public interest in the fishery management area under the geographical jurisdiction of the North Pacific Fishery Management Council. We expect the regulations to provide the framework for development of underutilized species of fish, to rebuild fishery stocks or maintain them at productive levels, and to increase profits and productivity of the U.S. fishing industry.

Statement of Problem

Background Information on Fishery Management Plans

The Fishery Conservation and Management Act of 1976 (the Act), as

amended, established a national fishery management program for the conservation and management of fishery resources subject to exclusive U.S. management authority in the fishery conservation zone (FCZ). The FCZ is the area between the seaward boundary of each coastal state and a point 200 miles from the baseline used to measure the territorial sea. Congress authorized this program to prevent overfishing, rebuild overfished stocks, ensure conservation of fishery stocks, and realize the full potential benefits of the Nation's fishery resources for present and future generations. To meet these objectives, the Act calls for the preparation of fishery management plans (FMPs) by the eight Regional Fishery Management Councils (the Councils), or under certain conditions, by the Secretary of Commerce (the Secretary). The Secretary is responsible for the review, approval, and implementation of these FMPs. Each Council has the authority to prepare an FMP for each fishery within its geographical area of authority. (A fishery is defined as one or more stocks of fish identifiable on the basis of geographical, scientific, technical, recreational, and economic characteristics.) Enforcement of the Act, including the provisions of approved FMPs and the implementing regulations, is the joint responsibility of the Secretary and the Secretary of Transportation (who oversees the operations of the Coast Guard).

The Act established seven National Standards to be applied by both the Council and the Secretary in the preparation and review of any FMP. The National Standards require that the Councils design their FMPs to: (1) achieve the optimum yield of a stock of fish (a species, subspecies, geographical grouping, or other category of fish capable of being managed as a unit) on a continuing basis; (2) use the best scientific information available; (3) manage an individual stock of fish as a unit throughout its range; (4) be nondiscriminatory among residents of different States (assigning fair and equitable fishing privileges); (5) promote efficiency in harvesting techniques or strategies; (6) take into account the variability of fishery resources and the needs of fishermen, consumers, and the general public; and (7) minimize the costs of conservation and management measures. Optimum yield (OY) is based upon the maximum sustainable yield (MSY) of a fishery modified by relevant economic, social, or ecological factors. The MSY is an average, over a reasonable length of time, of the largest catch which can be taken continuously

from a stock under current environmental conditions.

An FMP allows foreign fishing fleets to harvest that portion of the optimum yield of a fishery which will not be harvested by U.S. fishermen. To participate in a U.S. fishery in the FCZ, a foreign vessel must have a permit issued by the Secretary. Each permit contains a statement of the conditions and restrictions with which the foreign fishing vessel must comply.

Before a foreign nation may obtain a U.S. fishing permit, it must sign a Governing International Fishery Agreement (GIFA). This agreement acknowledges the exclusive fishery management authority of the United States and forms a binding commitment of that nation to comply with the terms and conditions specified under the Act. Any existing international agreements, other than GIFAs, are considered valid only if they were in effect before the Act and have not expired, been renegotiated, or been negated in any manner. The Secretary of State, in cooperation with the Secretary, determines the allocation of the total allowable surplus the applicant nation will receive.

The Bering Sea/Aleutian Island Groundfish FMP

The North Pacific Fishery Management Council (the Council) has developed an FMP for the groundfish fishery of the Bering Sea/Aleutian Island area off the coast of Alaska. The stocks covered by this FMP include Pacific Ocean perch, Alaska pollock, Pacific cod, yellowfin sole, turbot, sablefish, other flounders and flatfish, Atka mackerel, squid, and other species.

The FMP for the groundfish fishery in the Bering Sea/Aleutian Island area would replace the current Preliminary Fishery Management Plan (PMP) prepared by NOAA/NMFS. This is necessary because the PMP cannot regulate domestic fishing activities and, therefore, guard against overfishing and the potential for incidental catches of halibut in a directed fishery for groundfish.

The FMP addresses four problems: (1) maintaining stocks currently at levels of MSY; (2) rebuilding depleted stocks to levels of abundance producing MSY; (3) controlling the incidental catch of species of commercial importance to U.S. fishermen; and (4) establishing an environment conducive to development of a U.S. groundfish fishery.

(1) Maintaining or rebuilding of stocks. We (NOAA/NMFS) have conducted stock assessment studies on the following categories of Bering Sea/Aleutian Island groundfish species:

Alaska pollock, Pacific halibut, Pacific Ocean perch, yellowfin sole, turbot, other flatfishes, Pacific cod, rockfishes, sablefish, Atka mackerel, squid, and other species. With the exception of Pacific Ocean perch, Pacific halibut, and sablefish, we believe all other groundfish species in the Bering Sea/Aleutian Island area to be at levels of abundance equal to or greater than those that would produce MSY.

We consider Pacific Ocean perch stocks to be at relatively low levels of abundance because of: (1) a continuous decline in catch per unit of effort (CPUE) since 1968, (2) a drastic reduction in the availability of all sizes of ocean perch between 1969-1972, (3) a heavy dependence of the fishery on younger fish, and (4) the lack of any evidence of a strong incoming year class. The Council defined the target level which would serve the development of a stock rebuilding program as being equal to MSY (107,000 metric tons (mt)) in the FMP. Therefore, to promote rebuilding, the Council set the allowable biological catch (ABC = 10,750 mt) of Pacific Ocean perch at half of the current equilibrium yield (EY = 21,500 mt). The ABC is a seasonally determined catch that may differ from MSY for biological reasons. The EY is the annual or seasonal harvest which allows the stock to be maintained at approximately the same level of abundance, apart from the effects of environmental variation, in successive seasons or years.

Pacific halibut stocks have declined sharply in the eastern Bering Sea since the early 1960s. Recent surveys indicate an increase in the abundance of juveniles; however, abundance is still below early 1960s levels. The Council did not set an allowable biological catch for Pacific halibut in the FMP because the fishery is currently regulated by the International Pacific Halibut Commission (IPHC). Instead, the Council specified OY for species other than halibut covered by the FMP to accommodate rebuilding of halibut stocks. It is important to note that the rebuilding program of the IPHC is governed by a philosophy rather than a mandate to achieve a specified stock size. Specifically, the IPHC's concern is focused on rebuilding stocks back to levels which can support the maximum catch, given the biological and economic conditions of the fishery.

Analyses of CPUE data for sablefish by both U.S. and Japanese scientists show a declining trend. They have interpreted the declining trend in CPUE, coupled with catch data, as indicating that sablefish stocks in the eastern Bering Sea/Aleutian Region are at

reduced levels of abundance. The Council set the allowable biological catch for sablefish (5,000 mt) at 38 percent of the estimated MSY (13,200 mt) to facilitate rebuilding of the stock.

(2) Incidental catch. Foreign fishing fleets dominate current fishery activity directed at Bering Sea groundfish resources. Foreign vessels target on groundfish and substantial numbers of halibut and crabs (king and Tanner) are taken as an incidental catch. Although regulations require that these species be released, most die from injuries received during capture. In the eastern Bering Sea, we estimated the annual yield loss of halibut due to the incidental catch by foreign vessels to be 5,000 mt. On the basis of 1978 exvessel prices (the value of the catch at dockside), we calculated the potential market value of the lost halibut to be \$11,550,000. We projected the incidental catches of king and Tanner crab during 1977 to be about 0.6 million and 17.5 million crabs, respectively. The potential market value of the incidental crab losses using 1977 U.S. exvessel prices was estimated at \$4.8 million for king crab and \$13.6 million for Tanner crab. These estimates assume that U.S. fishermen would have caught the king and Tanner crab and that exvessel prices would not have changed significantly in response to the additional crab landings. We expect that regulations implementing the Bering Sea groundfish FMP and the Tanner crab FMP will reduce the incidental catch of crabs and halibut by foreign vessels. The magnitude of halibut and crab losses indicates that optimum yields, total allowable levels of foreign fishing, and domestic allowable harvests established in the FMP can affect several important domestic fisheries.

(3) Development of a U.S. groundfish fishery. Many U.S. fishing interests perceive the presence of fleets of large foreign trawlers as an impediment to the development of a domestic groundfish trawl fishery in the Bering Sea because of the possibility of: (a) preemption of favored grounds by concentrations of foreign vessels that are two to three times the size of the largest U.S. trawlers, and (b) competition for fish by foreign vessels that can apparently operate successfully at levels of abundance and average fish sizes that are less than those required for economic operation of domestic trawlers.

Management objectives for the groundfish fishery in the Bering Sea/Aleutian Island area are as follows:

(a) continue rebuilding the halibut resource so that a viable halibut longline (a type of gear with hooks attached to a long rope suspended from buoys) fishery

is again available to American fishermen;

(b) rebuild depleted groundfish stocks to, and maintain healthy groundfish stocks at, levels of abundance that will produce MSY;

(c) provide an opportunity for U.S. involvement in the Bering Sea/Aleutian Island groundfish fishery, limited only by the OY of individual species and objectives (a) and (b) above; and

(d) allow foreign participation in the fishery, consistent with objectives (a), (b), and (c), above.

Alternatives Under Consideration

In the process of preparing the FMP, the Council considered alternative management options to attain the plan's objectives. Before making a final decision on a particular set of management options, the Council developed a draft FMP and solicited, through public hearings and public comments, the advice and recommendations of all interested persons, including States and commercial and recreational fishery groups. After the Council selected the preferred management options, it prepared a final FMP for submission to the Secretary for review, approval, and implementation. The alternatives we now are considering are:

(A) Continue the 1979 PMP—Under this alternative, we would extend the 1979 PMP to cover the 1980 fishing season. However, a PMP can only regulate foreign fishing. As a result, the Council would not be able to develop regulations to permit the rebuilding of depleted stocks or to adequately control the incidental catch of species of commercial importance to U.S. fishermen (halibut, king crab, and Tanner crab).

(B) Develop an FMP—The FMP developed by the North Pacific Fishery Management Council contains management measures specifying OY for the total fishery (1,559,226 metric tons (mt)), domestic allowable harvest (56,100 mt), reserves (73,324 mt), and the total allowable level of foreign fishing (TALFF) (1,429,802 mt). The Council set optimum yields for Pacific Ocean perch and sablefish at levels which should result in rebuilding these stocks to MSY levels. The Council also set the domestic allowable harvest at a level consistent with the production expectations of both U.S. harvesters and processors.

To prevent the OY from being exceeded without hindering unexpected domestic fishery development (an unanticipated increase in U.S. catching capability and intent), we will hold in reserve 500 mt or 5 percent of the OY (whichever is greater) of each species

for allocation later in the fishing season on the basis of domestic need. Unless specifically withheld by the National Marine Fisheries Service Alaska Regional Director, acting with the advice of the North Pacific Council, up to 25 percent of the reserve of each species can be released to TALFF every two months, beginning with the end of the second month of the fishing year. The Council determined initial TALFFs for each species by subtracting the sum of domestic allowable harvest and reserve from optimum yield.

Additional management measures selected by the Council included statistical reporting requirements, and permit requirements and area closures for foreign fishing vessels.

(C) Areas Closed to Foreign Fishing—The Council considered several area closure alternatives applicable to foreign fishing fleets. These areas cover the "Winter Halibut-savings areas," the Petrel Bank, and fishing grounds off the western portions of the Aleutian Islands. If we allowed foreign fishing in these areas during the specified time periods, there would be a continuation of incidental halibut catches. Although these areas are known to contain large concentrations of juvenile halibut, we are unable to quantify the halibut yield losses.

Summary of Benefits

Sectors Affected: U.S. commercial fishing and processing in Alaska; consumers of groundfish; and the general public.

The optimum yield of 1,559,226 mt set by the 1980 FMP represents an increase of 133,156 mt over the OY of 1,426,070 mt specified in the 1979 PMP. There were also increases in the domestic allowable harvest (46,100 mt), reserves (71,224 mt), and the TALFF (15,832 mt). We have estimated that foreign nations could pay \$11.9 million in vessel and privilege fees to fish in the Bering Sea/Aleutian Island area in 1980.

At present, there is insufficient information to quantify the economic effects of this FMP on U.S. fishermen and processors. Projections of domestic catches are not reliable for the fishery because there has been only a limited amount of effort directed at the harvesting of groundfish by U.S. fishermen in the Bering Sea/Aleutian Island area. However, the preferential U.S. allocation of groundfish allows opportunity for expansion of U.S. harvests as rapidly as the private sector is willing to invest in the fishery. The U.S. allocation will permit the continued harvest of groundfish, which are used as crab bait, as well as the implementation of pilot projects for food fish production.

If these projects are successful, there may be an opportunity for expansion of U.S. exports of seafood products.

We also expect economic benefits from the rebuilding of stocks to levels of high abundance or to MSY levels. There are potential reductions in the cost of harvesting fish because of larger CPUE (i.e., greater productivity). Additionally, there is a strong consumer demand for halibut products. A rebuilt stock, under proper management, will enable the catch of the fishery to expand and increase the supply of halibut for the U.S. consumer.

A biological benefit of rebuilding depleted fish stocks is the maintenance of a large amount of genetic variability in the stock to increase its chances of adapting to changes in the environment. Also, there is the benefit of stabilizing the fishable population to reduce the likelihood of sharp yearly variations in the harvest.

Summary of Costs

Sectors Affected: The State of Alaska; the Federal Government; and the Departments of Commerce, State, and Transportation.

We project the total annual cost of implementing the FMP at \$5,574,000. Of this total, the cost of the foreign fishery observer program of \$370,000 will be reimbursed to the U.S. Treasury by foreign governments. The remaining \$5,204,000 is divided among the National Oceanic and Atmospheric Administration (\$493,000) for administrative and data collection costs, the State of Alaska (\$11,000) for data collection costs, and the Coast Guard (\$4.7 million) for ship and aerial patrols.

Related Regulations and Actions

Internal: Provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. § 1361 *et seq.*) have a bearing on this FMP through restrictions on killing or harvesting seals and sea lions (50 CFR Part 216), which may prey on fish already captured in nets. The FMP for Groundfish in the Gulf of Alaska (43 FR 17242, April 22, 1978) has implementing regulations designed to minimize the incidental catch of halibut. In addition, the Convention for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (5 UST 5) controls the directed catch of halibut.

External: The Alaska Department of Fish and Game and the Alaska Limited Entry Commission issue regulations which control the harvest of fishery resources in State territorial waters (0 to 3 miles) off the coast of Alaska.

Active Government Collaboration

We requested comments on this FMP from the Environmental Protection Agency; the Marine Mammal Commission; the Departments of Agriculture, Interior, State, and Transportation; and several State governments.

Timetable

Final Rule—December 1980.

Final Rule Effective—January 1981.

Available Documents

NPRM—44 FR 66356, November 19, 1979.

The Draft Environmental Impact Statement and Fishery Management Plan for the Groundfish Fishery in the Bering Sea/Aleutian Island area.

Draft Regulatory Analysis for the FMP.

Public Comments.

All documents are available for review at the National Marine Fisheries Service, Office of Resource Conservation and Management, Plan Review Division, 3300 Whitehaven Street, Washington, DC 20235.

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DOC-NOAA

Regulations Implementing a Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, United States Waters

Legal Authority

The Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. § 1801 *et seq.*

Reason for Including This Entry

The Department of Commerce (DOC) believes these regulations are of significant public interest in the fishery management area under the geographical jurisdiction of the Gulf of Mexico Fishery Management Council. We expect these regulations to increase productivity in the shrimp fishery.

Statement of Problem

Background Information on Fishery Management Plans

The Fishery Conservation and Management Act of 1976 (the Act), as amended, established a national fishery management program for the

conservation and management of fishery resources which are subject to exclusive U.S. management authority in the fishery conservation zone (FCZ). The FCZ is the area between the seaward boundary of each coastal State and a point 200 miles from the baseline used to measure the territorial sea. Congress authorized this program to prevent overfishing, rebuild overfished stocks, ensure conservation of fishery stocks, and realize the full potential benefits of the Nation's fishery resources for present and future generations. To meet these objectives, the Act calls for the preparation of fishery management plans (FMPs) by the eight Regional Fishery Management Councils (the Councils) or, under certain conditions, by the Secretary of Commerce (the Secretary). The Secretary is responsible for the review, approval, and implementation of these FMPs. Each Council has the authority to prepare an FMP for each fishery within its geographical area of authority. (A fishery is defined as one or more stocks of fish identifiable on the basis of geographical, scientific, technical, recreational, and economic characteristics.) Enforcement of the Act, including the provisions of approved FMPs and promulgated regulations, is the joint responsibility of the Secretary and the Secretary of Transportation (who oversees the operations of the Coast Guard).

The Act established seven National Standards to be applied by both the Councils and the Secretary in the preparation and review of an FMP. The National Standards require that the Councils design their FMPs to: (1) achieve the optimum yield of a stock of fish (a species, subspecies, geographical grouping, or other category of fish capable of being managed as a unit) on a continuing basis; (2) use the best scientific information available; (3) manage an individual stock of fish as a unit throughout its range; (4) be nondiscriminatory among residents of different States (assigning fair and equitable fishing privileges); (5) promote efficiency in the harvesting techniques or strategies; (6) take into account the variability of fishery resources and the needs of fishermen, consumers, and the general public; and (7) minimize conservation and management costs. Optimum yield (OY) is based upon the maximum sustainable yield (MSY) of a fishery, modified by relevant economic, social, or ecological factors. The MSY is an average, over a reasonable length of time, of the largest catch which can be taken continuously from a stock under current environmental conditions.

An FMP allows foreign fishing fleets to harvest that portion of the OY of a fishery which will not be harvested by U.S. fishermen. To participate in a U.S. fishery in the FCZ, a foreign vessel must have a permit issued by the Secretary. Each permit contains a statement of the conditions and restrictions with which the foreign fishing vessel must comply.

Before a foreign nation may obtain a U.S. fishing permit, it must sign a Governing International Fishery Agreement (GIFA). This agreement acknowledges the exclusive fishery management authority of the United States and forms a binding commitment of that nation to comply with the terms and conditions specified under the Act. Any existing international agreements, other than GIFAs, are considered valid only if they were in effect before the Act and have not expired, been renegotiated, or been negated in any manner. The Secretary of State, in cooperation with the Secretary, determines the allocation of the total allowable surplus the applicant nation will receive.

The Shrimp FMP

The Gulf of Mexico Fishery Management Council (the Council) has developed an FMP for the U.S. shrimp fishery in the Gulf of Mexico. Target species comprising the shrimp fishery include: brown shrimp, white shrimp, pink shrimp, and royal red shrimp. Seabobs and rock shrimp are caught incidental to the target species.

Shrimp is the single most valuable fishery in the United States, measured by the exvessel value of the reported catch (the value of the catch at dockside). In 1979, the U.S. fleet landed 93,722 metric tons (mt) of shrimp in the Gulf of Mexico with an exvessel value of \$378 million. Total value of all U.S. landings in 1979 (exclusive of catches off foreign coasts) was \$2.08 billion (2.68 million mt).

The Gulf Council identified the following major problems in the shrimp fishery:

(1) Conflict Among User Groups on Fishing Areas and Harvest Size of Shrimp. The commercial shrimp fishing fleet consists of small boat operations restricted to inland bays and shallow water offshore areas, and larger vessels which can fish in the territorial seas and the FCZ. In these fleets, some vessels prefer small size shrimp while other vessels focus on the larger size (higher valued) shrimp. Gulf State regulations control the shrimp catch in the territorial sea; however, there are no regulations in the FCZ to reflect the size preferences of the different segments of the shrimp fishing fleet.

(2) Discard of Shrimp by Culling. Several States have laws which restrict the size (i.e., the number of shrimp per pound) at which shrimp can be legally landed and marketed. Often, illegal-size shrimp are inadvertently caught and subsequently discarded (culled). There is a high mortality of these discarded shrimp, and this lowers the yield from the shrimp fishery.

(3) The Continuing Decline in the Quality and Quantity of Estuarine and Associated Upland Habitats. The alteration of the natural environment has destroyed some of the habitat of shrimp in their postlarvae and juvenile stages. Alterations include: (1) impoundments, which prevent the movement of shrimp; (2) bulkheading, which seals off critical marsh water or mangrove water interface; and (3) diversion of fresh water, which changes the salinity factor of natural areas. Most of these physical areas are outside the FCZ and, therefore, not under the direct jurisdiction of the Council. However, the Council is encouraging the State and Federal government agencies to protect these critical habitat areas and has established a special committee to monitor and research this problem.

(4) Lack of Basic Data Needed for Effective Management. Although statistical data covering the shrimp fishery of the Gulf of Mexico is more complete than for many other Gulf fisheries, there is a shortage of information concerning the optimum harvest sizes and the market sectors.

Alternatives Under Consideration

In the process of preparing the FMP, the Council considered alternative management options to resolve the problems in the shrimp fishery. Before making a final decision on a particular set of management options, the Council developed a draft FMP and solicited, through public hearings and public comments, the advice and recommendations of all interested persons, including States and commercial and recreational fishery groups. After the Council selected the preferred management options, it prepared a final FMP for submission to the Secretary for review, approval, and implementation. The following alternatives are a partial listing of the options considered in the shrimp FMP.

(A) Permanent Closure of the "Tortugas Shrimp Sanctuary"—This option would close to fishing the Tortugas Shrimp Sanctuary, which serves as a sanctuary for pink shrimp recruited to the Tortugas and Sanibel shrimp grounds. The State of Florida has closed part of the Tortugas sanctuary in its territorial waters to

shrimp fishing; however, the sanctuary also extends into the FCZ where Florida does not have jurisdiction over fishing vessels of other States. The objective of this option is to eliminate the capture and subsequent mortality of undersized shrimp. As a result, we expect the average size and availability of shrimp to increase in the fishing grounds beyond the sanctuary.

(B) Closure of the Territorial Sea of Texas and the Adjacent U.S. FCZ to Shrimp Fishing—The Department of Commerce will close the FCZ at the same time that the State of Texas closes its territorial sea. Closure normally occurs June 1 to July 15; however, the effects of environmental conditions on shrimp growth may necessitate a 15-day flexibility in the closing and opening dates. We expect this option to increase the yield of shrimp and to eliminate waste due to discarding of undersized brown shrimp in the FCZ. Studies indicate that closure would protect the smaller shrimp until they have grown to a more valuable size.

(C) Seasonal Closure of the FCZ off the Texas Coast out to either 20 Fathoms or 30 Nautical Miles—The State of Texas usually closes its territorial sea from June 1 through July 15. Extension of the closed season to either 20 fathoms or 30 nautical miles is intended to reduce the discard (biological waste) of small brown shrimp in the territorial sea and the FCZ associated with Texas during the May through August period.

The Council did not propose the 20-fathom and 30-nautical mile closure alternative. Although these measures would reduce biological waste, they would create substantial enforcement problems for the Coast Guard and National Marine Fisheries Service in monitoring the limited closure areas. Closure of the FCZ was the least expensive enforcement alternative.

(D) Spawning Area Closures—The Council considered several management measures which would protect shrimp from being harvested during spawning periods. These measures included area and seasonal closures and the establishment of sanctuaries. However, the Council did not propose any of these measures because our data did not support a biological advantage from protecting spawning shrimp. Our scientists have not established a strong relationship between the number of spawners and number of recruits into the fishery.

(E) Other Management Options—The Council considered a wide range of management measures concerning minimum sizes, different seasons, entry restrictions, and different gear types.

The Council rejected these measures because they could result in high enforcement costs, impose economic burdens on fishermen, or have no biological benefits.

The two major management measures selected by the Council are closure of the Tortugas Shrimp Sanctuary and the closure of the U.S. FCZ at the same time that Texas closes its territorial sea to brown shrimping.

Summary of Benefits

Sectors Affected: U.S. commercial fishing and processing; and the general public, including consumers of shrimp.

We have determined jointly with the Council that management of the shrimp stocks in the FCZ will probably provide a higher yield of shrimp in both weight and value than would result if we took no action. In the absence of an FMP, there would continue to be waste from culling and discarding of small shrimp, conflicts among users, and inadequate statistical information to monitor the fishery.

We expect that the expansion of the Tortugas Shrimp Sanctuary beyond the Florida territorial sea will result in an increase in pink shrimp landings of one million pounds. This increase is due to a combination of two factors: (1) growth in undersized shrimp (smaller than 69 tails to the pound); and (2) reductions in discarded (culled) shrimp. We estimate the total exvessel value of the increased landings at \$2.43 million (1978 dollars). In addition, we expect a positive effect on the economic efficiency of the shrimp fleet, i.e., landings per vessel should increase, assuming effort remains constant. However, as revenues increase, more shrimp vessels could be attracted into the fishery and have a negative impact on economic efficiency in the long run.

We expect that closure of the FCZ off the Texas coast, when a substantial portion of the brown shrimp weigh less than a count of 65 tails to the pound, may result in an increase in landings of 2.1 million pounds. This increase includes 0.5 million pounds from the growth of smaller shrimp and 1.6 million pounds due to use of previously discarded shrimp which now can be marketed. We estimate the exvessel value of the increase in landings at \$7.1 million (1978 dollars). The reason for the large increase in value is that the Texas closure shuts down the fishery for 45 days, which allows the shrimp to attain a larger, more valuable size. In the short run, we expect the economic efficiency of the fleet to increase as a result of the availability of more and larger-sized shrimp for a given level of effort.

Summary of Costs

Sectors Affected: U.S. commercial and recreational fishing and processing; and the Federal Government.

We estimate the Federal Government's costs (1980 dollars) associated with the implementation and enforcement of the shrimp FMP at \$1.7 million. These cost estimates include \$543 thousand for enforcement, \$374 thousand for data system development, and \$782 thousand for annual data system operation.

The statistical reporting system involves surveys of fishermen and processors. We have not yet established the sampling strategy for the surveys and, therefore, do not have estimates of reporting burdens.

Related Regulations and Actions

Internal: The shrimp FMP is related to the stone crab FMP (44 FR 53519, September 14, 1979), which establishes a seasonal boundary line to resolve gear conflicts. The shrimp FMP is also related to the draft coastal migratory pelagic resources (mackerel) FMP and the draft reef fish FMP through the incidental catch of groundfish and reef fish by shrimp fishing gear. The incidental catch of sea turtles, which are taken by shrimp trawling operations, is regulated by the Endangered Species Act of 1973 (16 U.S.C. § 1531 *et seq.*). The shrimp FMP also attempts to be consistent with the Marine Mammal Protection Act of 1972 (16 U.S.C. § 1361 *et seq.*).

External: The States of Texas, Louisiana, Mississippi, Alabama, and Florida regulate the catch of shrimp in their respective territorial seas.

Active Government Collaboration

We have requested comments on the draft FMP from Federal and State agencies, Regional Fishery Management Councils, Fisheries Associations and Commissions, Sea Grant Advisory Services, and the general public. We also work closely with the U.S. Fish and Wildlife Service to protect sea turtle populations.

Timetable

NPRM—December 1980.
Final Rule—March 1981.
Final Rule Effective—April 1981.

Available Documents

Draft Regulatory Analysis for the Shrimp Fishery Management Plan.
Draft Environmental Impact Statement and Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico.

Public Comments.

All documents are available for review at the National Marine Fisheries

Service, Office of Resource Conservation and Management, Plan Review Division, Washington, DC 20235.

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DOC-NOAA

Regulations on the Mining of Deep Seabed Hard Mineral Resources (15 CFR Part 970)

Legal Authority

Deep Seabed Hard Mineral Resources Act, 30 U.S.C. § 1401 *et seq.*

Reason for Including This Entry

The National Oceanic and Atmospheric Administration (NOAA) includes these proposed regulations because they may create a major impact on the economy by providing a legal system under which seabed mining by U.S. citizens may proceed. The proposed rules will have an integral relationship to the regulations of certain other programs and agencies, and they also may have significant public interest.

Statement of Problem

Pursuant to the Deep Seabed Hard Mineral Resources Act, the deep seabed hard minerals mining industry will be engaging in exploration authorized by NOAA until January 1988, at which time it may begin commercial recovery operations under permits issued by NOAA. The industry will be mining from the deep seabed nodules that include one or more minerals, at least one of which contains manganese, nickel, cobalt, or copper. The industry is in a formative stage, and the engineering and equipment requirements for mining at the necessary tremendous depths (approximately 15,000 feet) will necessitate very substantial investments by the mining industry. It is estimated that over \$1 billion ultimately must be invested for each mining system, including processing facilities. Five international consortia are now engaged in seabed mining exploration and development efforts, and seven United States companies are participants in four of these.

The significance to the United States of such mining is apparent from the fact that this country must rely almost entirely on imports to meet its needs for manganese (approximately 98 percent), cobalt (approximately 98 percent), and

nickel (approximately 75 percent), which are necessary for the production of steel and other alloys. Because of the increasing domestic needs and other export opportunities of present suppliers, the United States cannot count on a continued supply of imports of all of these metals. Thus, the future supply of such metals is not as reliable as it should be, considering their significance to the needs of the Nation.

The mining of such nodules from the deep seabed has been a major issue in the present discussions at the U.N. Conference on the Law of the Sea. In the face of the uncertainties created by the Law of the Sea negotiations with respect to the legal status of potential miners, U.S. companies determined that they could no longer proceed with the commitment of substantial resources in such efforts, in the absence of domestic legislation authorizing mining.

In response to this situation, Congress passed domestic legislation to establish a legal structure pursuant to which U.S. miners could proceed with their efforts, pending the conclusion of an acceptable Law of the Sea treaty. On June 28, 1980, P.L. 96-283, the Deep Seabed Hard Mineral Resources Act (the Act), became law. It establishes an interim program to regulate exploration for and commercial recovery of seabed minerals by U.S. citizens; encourages the successful conclusion of a Law of the Sea treaty that will assure, among other things, non-discriminatory access to seabed minerals for all nations; establishes an international revenue-sharing fund; accelerates NOAA's seabed mining environmental assessment program; encourages the conservation of seabed mineral resources; protects the environment; promotes safety of life and property at sea; and encourages the continued development of necessary seabed mining technology. The Act requires NOAA to promulgate implementing regulations, which will govern the issuance by NOAA of exploration licenses and commercial recovery permits for industry. As required by the Act, NOAA will issue proposed regulations within 270 days after enactment of the statute (March 1981) and final regulations within 180 days thereafter (September 1981).

Aside from the Act's requirement to promulgate these regulations, the consequences of not responding to the above problem would be the continued uncertainty for potential U.S. miners with respect to their legal ability to rely on returns on their deep seabed mining investments. This uncertainty probably would lead to a halt in the development

of such industry, which in turn would mean the continued U.S. dependence for the important metals on potentially unreliable foreign sources, at the same or increased levels.

Alternatives Under Consideration

NOAA is just beginning its rulemaking effort to implement the above statute. Therefore, the Agency has only begun to identify and consider alternatives in a very preliminary sense. In developing regulations for seabed mining, NOAA must address issues which fall into several areas. The major areas of issues raised by the Act are the financial and technological qualifications and capabilities of applicants; environmental effects and safeguards related to mining activities; resource development concepts; the safety of life and property at sea; international issues, including the prevention of interference by miners with other U.S. miners and with miners from foreign nations which have been licensed under compatible programs recognized by NOAA; and enforcement.

Alternatives for the development of seabed mining regulations are somewhat similar for all of the above areas, although different alternatives may be selected for different areas. Generally, one alternative would be to address these areas in substantial detail in the regulations, providing specific terms which would apply to all miners. If experience later revealed that such degree of detail and extent of requirements were unnecessary, we could reduce them. This approach would provide detailed guidance and predictability, but may prove to be unduly burdensome. On the other hand, NOAA could address an area in a more general way in its regulations, and then apply the general concepts in those regulations to the specific facts and site characteristics associated with each license or permit, relying more on individual terms, conditions, and restrictions for detail. This approach would allow greater flexibility; however, even individual provisions for some issues may require the acquisition of more information than NOAA and miners would possess at the time of granting a license or permit. A third alternative would be to employ less detailed requirements in both the regulations and the terms, conditions, and restrictions for each license and permit, and to rely on subsequent monitoring to ascertain whether additional requirements were needed in the future. This approach would provide the least predictability to applicants, but the amount of flexibility it allowed for addressing certain issues may be the

most desirable, given that the industry is in a developing stage.

In considering alternative approaches to these regulations, NOAA will assess the feasibility of relying on certain innovative techniques which may allow more flexibility for individual miners while still accomplishing the purposes and requirements of the statute. For instance, NOAA may be able to rely on more flexible general performance standards or parameters for issues such as environmental safeguards, rather than specifying detailed compliance requirements. NOAA also may provide guidance in its regulations for meeting the requirements of the statute and then make it the responsibility of the applicant to specify in detail in its application how it will meet these requirements. Once a license or permit is issued, NOAA would expect the miner to operate according to the terms of its application. In addition, NOAA plans to consider the small business implications of this program.

Summary of Benefits

Sectors Affected: Mining of copper ores and ferroalloy ores, except vanadium; metal mining services; primary metal industries; and the general public.

Generally, the benefits from these regulations will relate to the existence of a more certain legal structure within which mining may proceed. Yet mining will proceed in a responsible manner with respect to concerns such as environmental effects and rational development of the resources. These efforts in turn will provide a more stable source to the United States of important metals such as cobalt, manganese, nickel, and copper. NOAA also assumes that those companies will realize a reasonable profit from their efforts.

NOAA has decided to conduct a Regulatory Analysis on these regulations. As we develop that analysis, we will be able to develop a more detailed analysis of the benefits to be derived from the regulations.

Summary of Costs

Sectors Affected: Mining copper ores and ferroalloy ores, except vanadium; metal mining services; and primary metal industries.

NOAA's investigation of costs is preliminary. Currently, it appears that the primary costs which would be incurred are the costs to the Government to establish a legal foundation conducive to seabed mining and the costs to the public and private

sectors from the permit application and reporting requirements.

Related Regulations and Actions

Internal: None.

External: Pursuant to the Act, the Coast Guard will provide NOAA with necessary permit conditions for seabed miners in order to meet the statute's requirement pertaining to avoiding inordinate threat to the safety of life and property at sea. The Act provides that the Coast Guard will have the exclusive responsibility for enforcement measures which affect the safety of life and property at sea, and may assist NOAA in the enforcement of the provisions of the statute. Furthermore, the Act specifies that any discharge of a pollutant from a mining vessel or other floating craft will be subject to the Clean Water Act and thus require a National Pollution Discharge Elimination System permit from the Environmental Protection Agency.

Active Government Collaboration

NOAA already has initiated preliminary discussions with the Environmental Protection Agency and the Coast Guard with respect to their authorities discussed above, which we will address in our regulations. NOAA also has initiated discussions with the Department of State, which has specified functions under the statute relating to NOAA's designation of reciprocating foreign states (the recognition of other nations' programs, referenced above), and with the Department of Justice and the Federal Trade Commission, which under the statute are to conduct antitrust reviews of seabed mining applications. NOAA intends to continue to coordinate these functions in the most effective and efficient manner possible.

In addition to preliminary discussions with the above agencies, NOAA has initiated discussions with other agencies with expertise concerning or jurisdiction over any aspect of the recovery or processing of deep seabed hard mineral resources. Thus, NOAA has initiated discussions with the Corps of Engineers to assist and coordinate with that agency in planning for the impact of onshore processing of deep seabed nodules. NOAA has also discussed the potential implications of the statute with the Maritime Administration, which may receive requests for financial assistance for mining-related vessels. NOAA has initiated discussions with the Bureau of Mines, the U.S. Geological Survey and the Bureau of Land Management of the Department of the Interior in order to benefit from their experience in those

areas where the agencies have faced similar issues. Finally, NOAA has begun coordinating with the Small Business Administration in order to assess the potential impact of these regulations on small businesses.

In addition to this coordination at the Federal level, NOAA sponsored a study of the Federal, State, and local laws which would affect the possible siting of a seabed mining processing plant on the west coast of the United States and conducted public meetings on the west coast to allow relevant agencies and other interested persons to begin considering this possibility.

Timetable

NPRM—March 1981.

Regulatory and Other Analysis—We plan to issue a draft Regulatory Analysis and a draft Programmatic Environmental Impact Statement in March 1981.

Public Hearing—We will hold a public hearing during the comment period after the NPRM and draft Programmatic Environmental Impact Statement are issued.

Public Comment Period—60-day public comment period will follow the NPRM.

Final Rules—September 1981.

Final Rules Effective—October 1981.

Available Documents

The documents relevant to this rulemaking that are now available are the ANPRM (45 FR 49953, July 28, 1980), a draft environmental assessment report, which will form the basis for development of the Programmatic Environmental Impact Statement, and a preliminary discussion paper on the regulations which NOAA intends to make available to the public in November 1980. Information on the availability of these documents may be obtained from the Agency Contact below.

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DEPARTMENT OF THE INTERIOR

Heritage Conservation and Recreation Service

Uniform Rules and Regulations for the Protection and Conservation of Archaeological Resources Located on Public and Indian Lands (36 CFR 1215)

Legal Authority

The Archaeological Resources Protection Act of 1979, 16 U.S.C. § 470 aa-11.

Reason for Including This Entry

The Department of the Interior (DOI) believes these rules and regulations are important because they will significantly affect many archaeological investigations conducted on public and Indian lands by providing an equitable decisionmaking process within the permitting procedure and thereby ensuring greater accountability among Federal agencies. Furthermore, the regulations will improve the management of archaeological resources, detail procedures for civil penalties, and benefit authorized users by reducing or eliminating procedural differences within and among agencies.

Statement of Problem

In the past, the administration of the American Antiquities Act of 1906 (Public Law 59-209; 16 U.S.C. §§ 431-433) was subjected to legal challenges in the courts. The challenges were based on the statute's vagueness, resulting from its failure to inform the public in lay terms of what constitutes an "object of antiquity." Consequently, the criminal sanctions of this statute were easily avoided by those individuals who were destroying, excavating, and removing objects of antiquity without authorization from federally owned or controlled lands. In addition, P.L. 59-209 did not foster cooperation from all segments of society to protect and conserve such resources, for its focus was directed toward institutionally initiated research only. By 1974, it became obvious that the permitting sections of the Act were outdated because they did not provide adequate criminal penalties for violations.

As a result of the above, the Congress enacted the Archaeological Resources Protection Act of 1979 (P.L. 96-95) which provides adequate criminal penalties, clear definitions, new civil penalties, and the promotion of greater public involvement in the decisionmaking process connected with the permitting procedure. This new law is administered by the Heritage Conservation and

Recreation Service (HCRS), as is P.L. 59-209, on behalf of the Secretary of the Interior. Although HCRS exercises overall program policy direction, each land-managing bureau of the Department is responsible for field-level program operations on those lands under its immediate jurisdiction. This statute also applies to all Interior land-managing bureaus, the Departments of Defense and Agriculture, the Tennessee Valley Authority, and all other independent land-managing or holding agencies of the Federal Government.

On Indian lands, the specific individual Indian land owner or the recognized Indian tribal authority with jurisdiction over such lands owns the archaeological resources located thereon. Such lands are administered jointly by the Bureau of Indian Affairs and the appropriate tribal authority.

These regulations establish procedures for enforcing the Act. The regulations will place limitations on the use of archaeological resources located on all public and Indian lands. The rule will include a systematic permitting procedure, an appeals process for parties denied permits, and a procedural approach for civil penalties imposed by the Secretary of the Interior and the other major Federal land managers for those persons who violate the statute in a noncriminal manner. This approach leaves a measure of Secretarial discretion in educating the public rather than using only criminal sanctions as the single effective deterrent to resource degradation.

These regulations seek Federal-wide uniformity in program administration and management policy direction. The Department of the Interior, as the lead Federal agency in the field of historic preservation, seeks to provide national leadership in this effort.

The regulations will have a direct impact on the activities of collectors, treasure hunters, and other users of the public domain. These rules will also have a direct impact upon the activities of professional archaeologists undertaking either institutionally initiated field research investigations or work directly related to survey, clearance, and mitigation investigations for energy projects. These regulations will also create new opportunities for the Native American community, resulting in their direct authority to provide protection for such resources as form a part of their immediate cultural heritage.

HCRS, on behalf of the Secretary, either issues or denies permits for archaeological investigations after it completes an institutional and professional review process in response to each application received. The review

system constitutes a formal analysis of the applicant's ability to undertake the work, provide adequate curatorial facilities for the archaeological resources recovered, and meet several other requirements which demand professional objectivity by the Federal Government. Today, the success of many small professional archaeological businesses and the livelihood of thousands of employees depends upon responsible and objective review.

Therefore, the Federal Antiquities Program is one of the few such programs centralized to maintain uniform policy direction within the Department of the Interior and to ensure full professional accountability within the permitting authority. Applications are received from potential permittees and placed within a comprehensive review system which includes internal review, and review by the affected land managing bureau, scholars who are familiar with the archaeology of the proposed land area, and representatives of the appropriate Native American community. Permits are normally issued within 4 to 6 weeks after an application is received. In addition, HCRS may impose an emergency permitting procedure when specific archaeological resources are in immediate danger from natural or manmade terrain-altering activities, or when such investigations may delay energy-related projects if not allowed to commence immediately.

Alternatives Under Consideration

The Department considered several alternatives to this proposal:

A—No rules and regulations to implement the legislation. This alternative was rejected, for the Act requires at least two levels of rulemaking to occur.

B—Implementation through guidelines. This alternative would not have the binding force of rulemaking and would be contrary to congressional intent, and was therefore rejected.

C—More restrictive definition of "archaeological resource," which excludes bottles, bullets, coins, or other collector items of non-Native American manufacture. This alternative was rejected because it was not viewed as consistent with the broad purpose of the Act to protect and conserve the Nation's archaeological resources and sites. The field of archaeology is not confined to the study of prehistoric Indian cultural remains. Much of this Nation's cultural heritage is of non-Indian origin and can be the object of archaeological inquiry. Even common collector's items such as bottles and coins can be of great value in establishing the age of associated materials, demonstrating cultural contact, or determining the function of a

site. In order to preserve such value, blanket exclusion of such items was rejected in favor of a definition which provides a test for determining whether items have archaeological value.

Summary of Benefits

Sectors Affected: Federal land managers (including the Departments of the Interior, Defense, and Agriculture; the Tennessee Valley Authority; and all other independent land-managing or holding agencies of the Federal Government); professional archaeologists, particularly small professional archaeological firms; Native Americans; collectors and treasure hunters; the general public; and public and Indian lands throughout the United States (approximately 800 million acres), with major emphasis in the 13 Western States where the majority of such lands are located.

The major benefit of the proposed rules will be to inform the public of what is expected of them, and to clarify obligations of the Federal land managers to the public. Archaeological research and the resource base benefit because the program procedures are simpler to understand, and thereby inform the public in a clear, concise manner while affording a systematic and equitable permitting procedure for legitimate field investigations. The Native American community also benefits greatly because these regulations provide greater control of archaeological resources to the Indian landowners, and afford all Indian tribes an opportunity to provide comment on all undertakings proposed to occur on non-Indian public lands which may be their former traditional tribal lands.

This rule also clarifies the enforcement procedures of each land-managing bureau of the Department. The most important single benefit to the public in this rule lies in its implicit intent to foster greater and improved involvement and cooperation among the professional archaeological community, Native Americans, and collectors nationwide.

The Department of the Interior strongly believes one of the most important aspects of the Archaeological Resources Protection Act and its regulations lie in their authority to bring about a greater national sensitivity for the protection and conservation of archaeological resources. Because this program will increase public awareness, the Interior Department is confident that it will help to enhance and safeguard that which remains of our national patrimony as represented by the tangible remains of man's prehistory and history in the United States.

Summary of Costs

Sectors Affected: Federal land managers; professional archaeologists; educational and scientific institutions; numerous small businesses in the private sector (professional archaeology firms); Native Americans; and collectors.

It is difficult to provide reliable estimates for the direct and indirect costs of the regulations to the sectors they affect. However, we anticipate only minimal costs. Increases will occur in the costs to the Federal Government of administering the Federal Antiquities Program, especially through policy direction at the national level by HCRS on behalf of the Secretary of the Interior. Such expenses as recordkeeping, inspections of curatorial facilities, onsite field investigations, and overall program monitoring of project-specific activities by the land-managing bureaus will obviously bring additional costs. These same bureaus will incur slight increases in funds for law enforcement efforts, not by increasing the number of field agents, but by providing greater coordination among existing law enforcement facilities at the State and local levels and increased coordination among Federal law enforcement agencies.

HCRS has requested \$425,000 for FY 1981 for implementation of the program at the national policy direction level. Such funds as are necessary to implement the responsibilities of the several land-managing bureaus of the Department will be sought as needed by those bureaus, as well as the other Federal land managing departments and independent agencies. We anticipate the needs of the Interior land-managing bureaus not to exceed \$700,000 per fiscal year.

For other departments and independent agencies, the levels of funding for full program implementation above existing program levels will depend upon their actual level of involvement and whether or not they choose to delegate program administration and/or policy direction to the Department of the Interior. Fiscal impacts to existing protection and permitting programs for non-Interior agencies is expected to be proportionally equal to Interior.

Related Regulations and Actions

Internal: American Antiquities Act of 1906 (43 CFR 3)—The Department of the Interior published proposed rulemaking on the "Definition of an Object of Antiquity" on April 10, 1978 (43 CFR 14975). Due to the passage of P.L. 96-95, the definition of an "object of antiquity" will be republished as proposed

rulemaking under 36 CFR 1214 to coordinate definitions between the two separate statutes next spring after uniform regulations under 36 CFR 1215 are published in final and become effective.

External: None.

Active Government Collaboration

The Department of the Interior, through HCRS and under the auspices of the Federal Antiquities Program, initiated an interagency task force to write the rules and regulations immediately prior to the President's signing of House Bill 1825 (Archaeological Resources Protection Act), on October 31, 1979. On March 24, 1980, the Secretary of the Interior formally created the Interagency Rulemaking Task Force for the Implementation of Public Law 96-95. This task force is comprised of representatives of each Interior land-managing bureau, the Departments of Defense (Navy, Air Force, and Army) and Agriculture, and the Tennessee Valley Authority. In addition, several other smaller land-managing and holding independent agencies will be affected by these uniform regulations, and will be expected to issue agency-specific guidelines and procedures. This interagency task force will remain active through publication of final uniform regulations in the *Federal Register*.

These rules and regulations are the first in a three-tier rulemaking process. Subsequent to the publication of final regulations in the *Federal Register* of the uniform regulations, each Federal land manager (department or independent agency) is required to publish the next level of regulations specific to that department or agency's overall mission. Procedurally, each may vary in scope and applicability within the framework of the uniform regulations. Subsequent to the publication of final departmental regulations in the *Federal Register*, each bureau of a department may issue bureau mission-specific guidelines or procedures which may take the form of regulations within the scope of that particular bureau's departmental regulations or departmental manual.

Timetable

NPRM—Fall 1980.

Public Comment Period—60 days following NPRM, ending approximately December 19, 1980.
Regulatory Analysis—None.

Public Hearings—November 8, 1980—December 13, 1980 (Albuquerque, New Mexico; Anchorage, Alaska; San Francisco, California; Denver, Colorado; Chicago, Illinois; and Atlanta, Georgia).

Final Rule—Spring 1981.

Available Documents

"Archaeological Resources Protection Act of 1979; Notice of Permitting Procedures Pending Publication of New Regulations," *Federal Register*, January 23, 1980 (45 FR 5302).

"Archaeological Resources Protection Act of 1979; Public Hearings Prior to Publication of Proposed Rulemaking," *Federal Register*, March 19, 1980 (45 FR 17622).

Transcripts and recordings of early input public hearings held in Denver, Colorado (March 22, 1980); Phoenix, Arizona (March 29, 1980); Portland, Oregon (April 12, 1980); and Knoxville, Tennessee (April 19, 1980).

The Environmental Assessment, the Determination of Significance, and the Work Plan for Public Involvement.

The above documents are available by mail from the offices of the Heritage Conservation and Recreation Service, Washington, DC 20243, (202) 343-5264.

Agency Contact

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DOI—National Park Service

Right-of-Way Regulations (36 CFR Part 14*)

Legal Authority

16 U.S.C. §§ 5, 79; 23 U.S.C. § 317; 36 CFR Part 14 (45 FR 47092, July 11, 1980).

Reason for Including This Entry

The National Park Service (NPS) includes this entry because these regulations may have regionwide or local impacts on State and local government, and on other programs of the Department of the Interior or other Federal agencies.

Statement of Problem

A right-of-way is a use of National Park System lands by State and local governments, other Federal agencies, and private individuals and organizations for such purposes as roads and highways, utility and communication lines and facilities, pipelines, and water facilities.

Until July 1, 1980, the National Park Service in dealing with requests for rights-of-way, used regulations promulgated by the Bureau of Land

Management (BLM) and codified in 43 CFR Part 2800. However, BLM revised these regulations in accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1761) and deleted all reference to the National Park Service. Since the provisions of this Act and the regulations promulgated to comply with it do not apply to the National Park Service, the Service must develop independent regulations applicable to right-of-way requests on National Park System lands. At the present time, the National Park System of the United States comprises nearly 320 areas covering some 76 million acres in 49 States, the District of Columbia, Guam, Puerto Rico, Saipan, and the Virgin Islands. These areas include such designations as national park, national preserve, national monument, national memorial, national historic site, national seashore, and national battlefield park.

These regulations will provide a process for the review, consideration, and approval or disapproval of requests for rights-of-way across all areas of the National Park System. They will establish procedures for the granting of rights-of-way to State and local governments, other Federal agencies, and private individuals and organizations. These procedures will cover rights-of-way authorized at the discretion of the Secretary of the Interior, by individual park legislation, and for rights-of-way issued because of the right to which the holder is legally entitled.

Until these regulations are drafted, the Service is following interim regulations (45 FR 47092, July 11, 1980).

Alternatives Under Consideration

The National Park Service is considering two alternatives:

Alternative (A) is the drafting of right-of-way regulations which at a minimum are needed to comply with existing laws (16 U.S.C. §§ 5, 79 and 23 U.S.C. § 317). This will provide a process for the review, consideration, and approval or disapproval of requests for rights-of-way across all areas of the National Park System.

The disadvantage of this alternative is that it will not address all the issues and problems and may not assure the best protection of all National Park values. Issues and problems that would not be addressed under Alternative A include: access across park lands to private property, rights-of-way authorized in specific legislation establishing a park, and the effects on adjacent lands and landowners of NPS approval or denial of a right-of-way application. These situations currently exist in most of the more than 320 units of the National Park

System. By failing to address them in regulations, the NPS will not be providing the maximum protection to the natural, cultural, aesthetic, and recreational resources it administers and is required by law to preserve and protect.

Alternative (B) is the drafting of broader regulations that will cover such issues as: reasonable access to an owner's property, a legally held right to cross NPS lands, and right-of-way authorizations in individual statutes.

These broader regulations will address problems and issues that presently exist in units of the National Park System and will afford greater protection for the natural, cultural, aesthetic, and recreational values that the parks were established to protect. However, since these regulations will be addressing a greater number of complex issues and the indirect effects of granting rights-of-way (i.e., the impact on lands and landowners adjacent to the parks) it is likely that they will be more controversial and difficult to enforce.

At this time the National Park Service prefers alternative (B) because it will afford greater protection for all National Park System areas.

Summary of Benefits

Sectors Affected: Other Federal agencies; State and local governments; private industries (e.g., electric, gas, and other utility services, oil and gas extraction, pipeline transportation, communication services); other establishments requesting rights-of-way across National Park System areas; and NPS.

These rules will benefit each of these sectors because they will provide more detailed, specific, and concise procedures for rights-of-way across National Park System areas. They will also provide information on costs involved and the terms and conditions for revocation and cancellation of permits. These sectors will realize these benefits over the entire time span of the permit.

These regulations will benefit the National Park Service because they will provide detailed, specific, and concise instructions to park management and will afford protection to natural, cultural, aesthetic, and recreational park resources.

If these rules are not promulgated, none of these sectors will have the information or guidance that is necessary to deal with right-of-way requests.

Summary of Costs

Sectors Affected: Other Federal agencies; State and local governments; private industries (i.e., electric, gas, and other utility services, oil and gas extraction, pipeline transportation, communication companies); other establishments requesting rights-of-way across National Park System areas; and NPS.

At this time, NPS does not know what costs these sectors will bear as a result of this proposal. However, fees will be charged to applicants to cover the cost of processing the application. Rental fees, appraised at fair market value, will also be charged to the holder of a right-of-way. It is likely that these charges will be waived for State and local governments if their use of a right-of-way is for governmental purposes and such lands and resources shall continue to serve the general public.

Related Regulations and Actions

Internal: On July 11, 1980, the National Park Service issued interim right-of-way regulations (45 FR 47092). These regulations will remain in effect until replaced or revised through the rulemaking process. Other Interior agencies have right-of-way regulations. Bureau of Land Management regulations are located in 43 CFR Part 2800, and the U.S. Fish and Wildlife Service regulations are located in 50 CFR Part 28.

External: None reported.

Active Government Collaboration

The National Park Service is working with other Interior agencies (Bureau of Land Management, U.S. Fish and Wildlife Service) in the promulgation of these regulations. In addition, NPS will be working with State and local agencies as these rules are developed since these regulations will have an impact on their programs.

Timetable

NPRM—December 1, 1980.

Regulatory Analysis—The National Park Service has not made a determination on the need for a Regulatory Analysis. We are soliciting public comment on the potential economic impact of the proposed rule.

Public Hearing—None scheduled.

Public Comment Period—90 days following publication of NPRM. Comments should be directed to Division of Ranger Activities and Protection, National Park Service, Department of the Interior, Washington, DC 20242.

Final Rule—June 15, 1981.

Final Rule Effective—July 15, 1981.

Available Documents

ANPRM—45 FR 54771, August 18, 1980.

Agency Contact

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DOI—Office of Surface Mining

Definition: "Surface Coal Mining Operations" (30 CFR 700.5*) and "Coal-Processing Plant" (30 CFR 701.5*)

Legal Authority

30 U.S.C. § 1201 *et seq.*

Reason for Including This Entry

The Department of the Interior (DOI) Office of Surface Mining (OSM) is initiating a study of the characteristics of coal-processing plants located outside the mine permit area. This study is being undertaken to inform OSM in its determination of the nature and scope of regulations of these facilities. One outcome of this study may be an amendment of the definition of "surface coal mining operations" and "coal-processing plant." The amendment, if adopted, might have a major impact on the coal industry.

Statement of Problem

The definitions of "surface coal mining operations" and "coal-processing plant" in the existing regulations do not indicate clearly which off-site coal-processing plants are to be regulated. Physical or chemical processing of coal may produce coal waste and DOI has a legal mandate to regulate the treatment and disposal of this waste. The coal-processing plants and their support facilities may be located within or outside the permit area for a mine, and the current regulations do not always clearly specify whether those facilities outside a permit area fall in with DOI's regulatory jurisdiction.

Furthermore, the degree of the environmental impact from the operation of coal-processing plants may vary according to the nature and location of the plant. Consequently, unless the regulatory agency obtains a clear understanding of the whole industry and the agency's regulatory jurisdiction, some coal processing plants that are located outside the permit area

but cause serious environmental and pollution problems may be outside the jurisdiction of the regulatory agency.

OSM is initiating a study and possibly revising the definition of "surface coal mining operations" and "coal-processing plant," mainly in response to a 1979 decision of the DOI Board of Surface Mining and Reclamation Appeals. The case involved Western Engineering Company, which operates a river terminal exclusively to prepare and load coal on barges. Western sometimes crushes coal and sprays the coal with water or takes other measures to control dust. Western was cited by OSM for failure to pass the effluent from these operations through a sedimentation pond and for violation of the effluent limitations. The Board overturned the enforcement action, concluding that OSM's regulations delineating which processing facilities were regulated were unclear.

If OSM does not take any action, similar uncertainty and pollution will continue to occur and, therefore, complicate OSM's enforcement work.

Alternatives Under Consideration

The proposed amendment will clarify OSM's intent on which coal-processing plants are to be regulated and eliminate any ambiguities in OSM's regulations. One alternative OSM can consider is taking no action. Depending upon the outcome of the study, it is possible OSM may take no action; however, OSM presently favors some change in regulations in order to minimize the adverse environmental impact of coal-processing operations, and to clarify for the industry who is and who is not regulated.

Among other things, the study will determine the number and location of coal-processing plants that will produce clean coal and coal waste and the number and location of coal-processing plants that will only crush and load coal. The study will also report what environmental standards those plants are currently operating under or should be complying with and the cost of such compliance.

Summary of Benefits

Sectors Affected: Owners and employees of coal-processing plants (breakers, washeries, screening and sizing plants); persons who live near and around coal-processing plants; the general public; OSM and State regulatory authorities.

Owners of coal-processing plants will have the benefit of knowing whether their plants are subject to regulation, thus eliminating uncertainty and saving cost. Citizens who live near coal-

processing plants will have the benefit of knowing whether the plants are subject to regulation. The regulatory authority will know the jurisdiction of its enforcement authority and, therefore, perform better enforcement.

Indirectly, citizens who live in communities with coal-processing plants will enjoy cleaner air and water and improved quality of life. The general public will also enjoy a better environment.

Summary of Costs

Sectors Affected: Owners of coal-processing plants (breakers, washeries, screening and sizing plants); the general public; OSM and the State regulatory authority.

OSM is initiating a study to determine more specifically the number and location of various types of coal-processing plants, such as the number and location of plants that only crush and load coal and the number and location of coal-processing plants that clean coal and produce waste products.

Besides determining the number and kinds of coal-processing plants, this study will also discuss the direct and indirect costs to such plants resulting from any proposed action. Such costs might include the cost incurred by the plant owner to comply with the regulations. Total costs will be determined by the study itself.

States that have primary responsibility for enforcing the OSM regulations may have to change their corresponding definitions of "surface coal mining operations" and "coal-processing plants," and consequently their jurisdiction may also change.

Related Regulations and Actions

None.

Active Government Collaboration

None at the present. OSM may collaborate with the Environmental Protection Agency and the Mine Safety and Health Administration in the future.

Timetable

ANPRM—May 15, 1981.

NPRM—June 15, 1981.

Regulatory Analysis—None.

Public Hearings—Between June 15, 1981 and August 15, 1981 at the following locations:

Washington: Department of the Interior Auditorium, 18th and C Streets, N.W., Washington, DC
Indianapolis: Indiana World War Memorial Auditorium, 431 North Meridian Street, Indianapolis, IN

Denver: Court House, 1961 Stout Street, Room C-503, Denver CO

Public Comment—Written comments

can be mailed or hand-delivered to the Office of Surface Mining, U.S. Department of the Interior, Administrative Records Office, Room 153 South, 1951 Constitution Avenue, N.W., Washington, DC 20240. Written comments will be accepted between June 15, 1981 and August 15, 1981.

Final Rule—Final rule will be published in the *Federal Register* on November 15, 1981.

Final Rule Effective—30 days after the publication of the final rule.

Available Documents

None.

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DOI-OSM

Discharge from Mine Areas: Revision of Standards for Effluent Limits and Sedimentation Ponds (30 CFR 716.17*, 717.17*, 816.42*, 816.46*, 817.42*, and 817.46*)

Legal Authority

Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201 *et seq.*

Reason for Including This Entry

The Department of the Interior (DOI) considers these rules to be of general public interest because they concern the environment and the public health and safety and because they will help to improve the quality of the waters of the United States.

Statement of Problem

On December 13, 1977, the Office of Surface Mining (OSM) published initial regulations for control of sediment in discharges from areas of surface coal mining and reclamation activities and on March 13, 1979, published final regulations. The rules established specific limitations—called “effluent limitations”—on the total suspended solids (TSS) iron and manganese content of the discharges from the mining area. The rules also required that all runoff be passed through sedimentation ponds and established minimum design criteria for these ponds. Essentially, sedimentation ponds improve the quality of discharges by detaining runoff until heavier particles settle to the bottom of the pond.

The TSS limitations were essentially the same as those established by EPA on April 26, 1977 (42 FR 21380) and on January 12, 1979 (44 FR 2586). EPA's regulations were promulgated pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.* OSM's pond design criteria were based on the best technical information available when the OSM regulations were published. Six months after publication of the final regulations, however, two studies—one conducted by Skelly & Loy under contract to EPA and the other by D'Appolonia under contract to OSM—indicated that discharges from ponds designed to meet OSM's design criteria might not be able to meet the TSS effluent limitations during large precipitation events.

On the basis of these studies, the Joint National Coal Association/American Mining Congress (NCA/AMC) Committee on Surface Mining Regulations filed a petition with the Secretary of the Interior to immediately suspend the TSS effluent limitations and sedimentation pond design criteria. The petition was published in the *Federal Register* (October 18, 1979, 44 FR 60226), and a public comment period followed. EPA also solicited comments on the studies during the same period and, on December 28, 1979, amended its TSS effluent limitation regulations. The amendment granted an exemption from compliance with the effluent limitations during rainfall events to operations whose facilities are designed, constructed, and maintained to treat or contain a 10-year/24-hour rainfall event.

On December 31, 1979, OSM suspended certain of its regulations and also published a notice of intent to commence rulemaking. On January 30, 1980, OSM adopted EPA's amended effluent regulations, including EPA's rainfall exemption from the effluent limitations.

EPA expects to propose new TSS regulations by October 1980, and final regulations by April 1981. These will be based on an ongoing EPA field study of representative sedimentation ponds across the country. Consequently, OSM will postpone further rulemaking pertaining to these issues until sufficient data from this study are available for use in revising the OSM sedimentation pond design criteria, if that should be necessary.

Alternatives Under Consideration

(A) OSM would re-adopt its present regulations, including the effluent limitations and the sedimentation pond design criteria.

This option will comply with the mandate of the Act by improving the quality of the waters entering the

receiving stream. However, as the Skelly & Loy and D'Appolonia studies have indicated, operators may not be able to comply with the effluent limitations during large rainstorm events, even with ponds conforming to the design criteria. In order to comply with the effluent limitations during a large rainfall event the size of the pond would have to be so large that it would be unfeasible to consider.

(B) OSM would adopt a rainfall exemption to either increase or decrease the size of the precipitation event to which the exemption is keyed—10-year/24-hour at present—but would re-adopt the effluent limitations and sedimentation pond design criteria.

This option will comply with the mandate of the Act and give minimum national design standards for sedimentation ponds. This option will also protect and improve the Nation's waters and limit the additional contribution of TSS to the receiving stream. However, the studies have indicated that even with ponds designed to OSM standards, operators may exceed the effluent limitations during large rainfall events.

(C) The same as (B), except that the sedimentation pond design criteria would be modified to reflect the conclusions of the Skelly & Loy and the D'Appolonia studies.

This option also complies with the mandate of the Act and provides minimum national design standards for sedimentation ponds. This option also protects and improves the Nation's waters and limits the additional contribution of TSS to the receiving stream. However, as stated above, the studies indicate that even with ponds designed to OSM standards, operators may exceed the effluent limitations during large rainfall events.

(D) OSM would re-adopt the effluent limitations, but would delete design criteria concerned with the size of sedimentation ponds. All other design criteria would be re-adopted including the requirement to install a pond.

This option has advantages and disadvantages similar to those of option (B) and (C). However, it will provide operators and regulatory authorities with greater flexibility in designing sedimentation ponds.

(E) OSM would re-adopt its effluent limitations and design criteria, but would grant an exemption from the effluent limitations to structures conforming to OSM's design criteria. OSM would propose special design criteria for steep slope areas.

One of the advantages of this option is that it will help protect the Nation's waters while giving relief to operations

on steep slope areas. A disadvantage is that, according to the Skelly & Loy and D'Appolonia studies, the effluent limitations may be exceeded during rainfall events even with ponds designed to OSM design standards.

(F) OSM would re-adopt all sections of the regulations on sedimentation ponds as they existed prior to suspension, except for sections dealing with effluent limitations and rainfall exemptions. OSM would delete these sections and replace them with new regulations incorporating rainfall and TSS effluent limitations to be promulgated by EPA under 40 CFR 434.

By adopting EPA's effluent limitations, OSM would comply with the requirements of the Act. As stated previously, re-adoption of the sedimentation pond design criteria will not assure that the effluent limitations will be met at all times.

(G) OSM would re-adopt the current effluent limitations and apply them only to base flow (discharges during non-rain periods). OSM would adopt a rainfall event effluent limitation to be promulgated by EPA based on field data presently being gathered. Based on the rainfall event effluent limitations, OSM would develop minimum nationwide sedimentation pond design standards.

We are currently considering this option as the most feasible. We know that the existing effluent standards are achievable during non-rain periods. EPA is collecting field data throughout the Nation and sampling the influent and effluent from sedimentation ponds before, during, and after rainstorms. Once the data are analyzed, we can also promulgate nationwide effluent standards for rainstorms. This two-tier effluent standard system will give maximum protection to the Nation's waters without imposing an undue burden on operators.

Summary of Benefits

Sectors Affected: The coal mining industry; users of water downstream from coal mining and reclamation operations; the general public; and the general environment.

There will be a significant improvement in the quality of the Nation's waters due to improvement in the discharges from sedimentation ponds. This will benefit all downstream users, improve the aesthetics of streams receiving discharges from coal mining and reclamation operations, and give coal operators guidance on how to comply with the Act, eliminating confusion which they now experience.

The cost of treating water for human consumption will decrease, though the exact amount is not yet known.

Waterborne organisms will decrease by an amount not yet known. Fish, as well as organisms living on stream and lake bottoms, will be subject to less man-caused pollution. In summary, the quality of life will be improved.

Summary of Costs

Sectors Affected: The coal mining industry.

We have not prepared a formal Regulatory Analysis (RA) of all the alternatives. However, OSM published an RA for the public final permanent program regulations in March 1979 (OSM-RA-1). It showed that the production-weighted average national cost in incremental cents per ton of constructing sediment ponds designed to OSM specifications is 16 cents for surface mining and 2 cents for deep mining. There is a distinct possibility that this average cost might decrease when OSM promulgates new regulations because sedimentation pond size they require might be smaller. OSM does not envision an increase in these figures. Since these costs are relatively insignificant compared to the cost of a ton of coal (roughly \$22), no decrease in coal mining operations is expected. To verify this assumption, OSM will conduct an economic analysis during Fiscal Year 1981. The analysis will also provide specific information on the economic impact on small operators and operations in the Appalachian region as well as information on the general economic impact on the coal industry.

It is difficult to assess how much more the users of coal will pay due to the regulations.

Related Regulations and Actions

Internal: Listed under Available Documents.

External: EPA regulations as described throughout the entry.

Active Government Collaboration

OSM is actively coordinating its rulemaking efforts with the Environmental Protection Agency, which has the responsibility for regulating all discharges to the Nation's waters. The agencies will work together in promulgating regulations.

Timetable

Public Hearings—Washington, DC—November 20–21, 1980.

Knoxville, TN—November 24–25, 1980.

Indianapolis, IN—November 27–28, 1980.

Kansas City, KS—December 1–2, 1980.

Denver, CO—December 4–5, 1980.

Seattle, WA—December 10–11, 1980.

Public Comment Period—Between

November 7, 1980 and December 31, 1980. Comments can be mailed or hand-delivered to the Office of Surface Mining, U.S. Department of the Interior, Administrative Records Office, Room 153 South, 1951 Constitution Avenue, N.W., Washington, DC 20240.

NPRM—Fourth Quarter, 1980

Regulatory Analysis—None.

Final Rule—April 15, 1981.

Final Rule Effective—May 15, 1981.

Available Documents

- 42 FR 62639–62716, December 13, 1977. Surface Mining Reclamation and Enforcement Provisions—Final Rules.

- 44 FR 14901–15463, March 13, 1979. Surface Coal Mining and Reclamation Operations—Permanent Regulatory Program.

- 44 FR 30610–30634, May 25, 1979. Surface Mining Reclamation and Enforcement Provisions—Final Rules for initial regulatory program.

- Evaluation of Performance Capability of Surface Mine Sediment Basins, Skelly & Loy, August 3, 1979.

- Evaluation of Sediment Pond Design Relative to Capacity and Effluent Discharge, D'Appolonia, August 3, 1979.

- Petition filed with OSM by the National Coal Association/American Mining Congress (NCA/AMC) Committee on Surface Mining Regulations, September 21, 1979.

- 44 FR 60226–60228, October 18, 1979. Surface Coal Mining and Reclamation Operations Permanent Regulatory Program; petition to amend sediment control performance standards.

- Comments on the NCA/AMC Petition (fifty).

- 44 FR 77447–77454, December 31, 1979. Notice of suspension and withdrawal of certain rules in 30 CFR Chapter VII subchapter B and K; and statement of policy regarding effect on State programs and enforcement during initial and permanent program.

- 44 FR 77456–88457, December 31, 1979. Notice of intent to commence rulemaking to establish effluent limitations for total suspended solid discharges.

- 45 FR 6813, January 30, 1980. Parther Creek Watershed, MI, notice of finding no significant impact from the deauthorization of Federal funding.

- 45 FR 6913, January 30, 1980.

- Comments on notice to proposed rulemaking for sedimentation ponds.

- Final Regulatory Analysis, Permanent Regulatory Program of the Surface Mining Control and Reclamation Act of 1977, OSM-RA-1.

Documents can be examined at: OSM Headquarters, U.S. Department of the Interior, South Building, Room

153, 1951 Constitution Avenue, N.W., Washington, DC 20240; (202) 343-4728.

OSM Region I, First Floor, Thomas Hill Building, 950 Kanawha Blvd., East, Charleston, WV 25301; (303) 342-8125.

OSM Region II, 530 Gay Street, Suite 500, Knoxville, TN 37902; (615) 637-8060.

OSM Region III, Federal Building and U.S. Courthouse, 46 East Ohio Street, Room 520, Indianapolis, IN 46204; (317) 369-2609.

OSM Region IV, 818 Grand Avenue, Scarritt Building, 5th Floor, Kansas City, MO 64106; (913) 753-2193.

OSM Region V, Brooks Towers, 1020 15th Street, Denver, CO 80202; (303) 827-5511.

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DOI-Water and Power Resources Service

Rules and Regulations for Acreage Limitation Under Federal Reclamation Law (43 CFR 426)

Legal Authority

The Reclamation Act of 1902, as amended and supplemented, 43 U.S.C. § 371 *et seq.*

Reason for Including This Entry

The Department of the Interior (DOI) believes that these rules and regulations are important because they will affect about 50,000 farms throughout the 17 Western States which receive irrigation water from projects administered by its Water and Power Resources Service (WPRS), formerly the Bureau of Reclamation.

Statement of Problem

Federal reclamation law places a limit of 160 acres on the quantity of land an individual or organization may own and irrigate with water from a Federal water supply project. Only projects where specific Congressional or administrative exemptions or modifications to the law have been granted may exceed this limit, which has been in effect since the basic Reclamation Law was enacted in 1902. Land in excess of 160 acres may receive project water if the owner enters into a contract with the United States agreeing to sell the excess land to an individual who, after the purchase, will not own more than 160 acres. The sale must be made under terms and conditions that satisfy the Secretary of

the Interior, and at a price that does not reflect the increase in the value to the land attributable to the construction of the Federal reclamation project. The contract specifies the time period during which the landowner must sell the excess land. If the landowner does not sell the land within that period, the Secretary of the Interior has power of attorney to sell the land. If the landowner chooses not to use Federal project water for the excess land, there is no requirement that he place the land under contract or that he sell it. The 1902 Act also imposes a requirement that the landowner be a resident on or in the neighborhood of the land, interpreted to be 50 miles from the land, to be eligible to receive project water.

The purposes of the acreage limitation provisions of the reclamation law are to promote owner-operated family farms, provide opportunity for a maximum number of farmers on land that Federal project water serves, and preclude speculative gain in the disposition of land that project water serves. In the past, these provisions have been administered through State-chartered irrigation districts and other entities that have contracted with the United States for the Federal reclamation project. The DOI has made determinations on the application of the provisions on a case-by-case basis, based on court decisions and opinions of the Solicitor of the Department of the Interior. The DOI has never promulgated formal rules by which the acreage limitation provisions would be administered.

The practices followed in the past have resulted in a lack of uniformity among the irrigation districts in administering the acreage limitation provisions, and, in some cases, in lax enforcement of those provisions by the districts. In August 1976, a United States district court ordered the Secretary of the Interior to prepare and publish rules and regulations dealing with acreage limitation under reclamation law, with specific reference to procedures to be used to approve sales of excess land (*National Land for People, Inc. v. The Bureau of Reclamation of the Department of the Interior* (417 F. Supp. 449 (D.C.D.C. 1977))). Such rules and regulations will provide the needed guidelines for the uniform administration of the acreage limitation of the reclamation law to ensure that the purposes of the law are carried out.

On August 25, 1977, the DOI published proposed rules and regulations for acreage limitation in the *Federal Register* (43 CFR Part 426). During the 128-day comment period on these proposed rules, the DOI received over

11,000 written comments and heard testimony from 1,075 witnesses at 17 public hearings. The Department then revised the proposed rules, taking these comments into consideration. These revised rules will serve as the basis for the environmental impact statement (EIS) the DOI is preparing to comply with the order of a United States district court, issued December 7, 1977, halting the rulemaking until the Department completed an EIS. The draft EIS will be published by December 15, 1980, and the final EIS by July 1, 1981. The EIS will assess the economic, social, community, and environmental effects of the proposed rules.

The revised proposed rules include provisions dealing with the sale of excess land, limitations on leasing, residency requirements, and other provisions to establish criteria and procedures to implement and enforce the acreage limitation provisions of law.

Alternatives Under Consideration

The EIS will address a number of alternative rules that DOI can establish under existing law, as well as alternatives requiring amendments to the acreage limitation provisions of reclamation law. The alternatives will deal with the size of ownerships and operations that are eligible for Federal project water, residency requirements, ownership arrangements, and procedures that the DOI must use in processing sales of land receiving Federal project water. The alternatives will include the following:

Alternative (A) is a small-farm alternative, with the size of the farm operation eligible to receive Federal project water limited to 320 acres.

Alternative (B) is based on amendments to reclamation law proposed by DOI that reflect the revised proposed rules. They would limit the size of the farm operation that is eligible to receive Federal project water to 960 acres, and limit the multiple ownership arrangements that are permitted.

Alternative (C) is based on procedures used in the past which limited ownership to 160 acres per individual and permitted loose multiple ownership arrangements and unlimited leasing.

Alternative (D) is based on the pricing structure for Federal project water that would permit delivery of project water to excess land upon payment to the Federal Government of the full cost of providing the water service.

Alternative (E) is based on no acreage limitation or the repeal of the acreage limitation provisions and residency requirements of reclamation law.

The EIS will consider other alternatives as well. Both the draft and final EIS will address the pros and cons of the alternatives. The draft statement is scheduled to be published December 15, 1980, and the final statement July 1, 1981.

Summary of Benefits

Sectors Affected: Agriculture in the 17 Western States where WPRS projects are located.

The regulations will apply to deliveries of irrigation water to over 12 million acres of land in about 50,000 farms in these projects.

The major effect of the proposed rules will be related to the change in the size of farm operations on Federal reclamation projects and to the number of family farms that may result. On many projects the change in the number and size of farms may not be significant, while on others, where larger farm operations exist, there would be a noticeable increase in the number of farms and a reduction in their size. The change in the agricultural sector could result in economic effects on production efficiency, improving the efficiency in some cases and reducing it in others; changes in income to the farm family, both up and down; increases in the community income as the number of farms increases; and changes in the nature and number of employment opportunities. The EIS on the proposed rules, currently being prepared, will identify and analyze these and other impacts of the rules. While the reduction in large-scale farming may result in a change in the number of farming opportunities, the overall change in income to the agricultural sector may not be significant; however, DOI will complete a Regulatory Analysis of the proposed rules if it appears necessary after we have completed the draft EIS.

Summary of Costs

Sectors Affected: Agriculture in the 17 Western States where WPRS projects are located; and WPRS.

Until we complete the EIS, it is difficult to provide reliable estimates of the direct and indirect costs of the regulations to the sectors they affect. We have discussed the possible costs-versus-benefits in the section above. In addition, increases may occur in the cost of administering the acreage limitations of law under the regulations by the Federal Government in recordkeeping, inspections, and monitoring irrigation water deliveries in projects involved. There may be an increase in the cost of public services in

some areas where new farms may be established.

Related Regulations and Actions

None.

Active Government Collaboration

The Department of Agriculture is cooperating in preparing the EIS on the proposed regulations.

Timetable

Draft EIS and Revised NPRM—

December 15, 1980.

Public Comment Period—Ends March 16, 1981.

Public Hearings—December 15, 1980—March 16, 1981.

Regulatory Analysis—After December 15, 1980, if required.

Final Rule—September 1981.

Available Documents

"Department of the Interior, Bureau of Reclamation, Acreage Limitation Rules and Regulations," NPRM—43 FR 426, August 25, 1977.

"Environmental Assessment of the Impact of Proposed Rules and Regulations for Acreage Limitation Administration as published in the Federal Register, August 25, 1977." Prepared by the Bureau of Reclamation, January 1977.

The above documents are available without cost from the Water and Power Resources Service, Department of the Interior, 18th and C Streets, N.W., Washington, DC 20240.

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DEPARTMENT OF TRANSPORTATION

United States Coast Guard

Construction Standards for the Prevention of Pollution from New Tank Barges Due to Accidental Hull Damage; and Regulatory Action to Reduce Pollution from Existing Tank Barges Due to Accidental Hull Damage (46 CFR Parts 30*, 32*, and 35*)

Legal Authority

Port and Tanker Safety Act of 1978, 33 U.S.C. 1221, 46 U.S.C. § 391a.

Reason for Including This Entry

The Coast Guard believes that this rule is important because it has major

economic implications for the barge and towing industry in this country. In addition, testimony presented at the hearings on this proposal indicated that the rule may adversely affect the national oil supply network because it would take barges out of service that may not be replaced.

Statement of Problem

Data gathered by the Coast Guard show that, from 1973 through 1977, the total volume of oil spilled by tank barges was about 174,000 barrels. Approximately 85 percent of the oil spilled resulted from hull damage, which occurred as a result of groundings and collisions in the normal course of barge movements. Because barges operate mainly on the inland river system, most of the oil spilled by tank barges enters highly sensitive inland waters where the effect on the marine environment is more significant than it would be on the high seas. While the amount of pollution entering the waters from tank barges fluctuates annually, it is not decreasing in general. Thus, the present regulations in 33 CFR Subchapter O dealing with pollution prevention, which essentially regulate only loading and unloading operations, are insufficient to reduce oil pollution from tank barges. Based on a study entitled "Tank Barge Oil Pollution Study," prepared by Automation Industries, Inc., the Coast Guard has concluded that the lack of construction standards for tank barges is a major factor in the pollution they cause. After reviewing the data, the Coast Guard determined that a "no action" alternative is not acceptable. The barge industry would not attack the river pollution problem without our intervention. The Coast Guard believes that barges need the protection of a double hull to prevent cargo discharge, which would ordinarily result from groundings and minor collisions that breach the hulls of single-skin barges.

Alternatives Under Consideration

In 1971 the Coast Guard proposed a requirement for double walls on new tank barges constructed for the carriage of oil in specified trades. This proposal would have required the vertical surfaces, or walls, of barges to be double, but it did not propose double bottoms. Because the normal attrition of existing tank barges is fairly slow, there would be no dramatic reduction in oil pollution due to improved construction standards for new barges. In order to accelerate the retirement of the existing fleet of single-hull barges, the 1971 proposal included a provision that would have prohibited the complete rebuilding of existing vessels, and would

have allowed only limited repair to damaged areas on these vessels. This provision was designed to speed the attrition of existing single-hull barges, while at the same time allowing them sufficient service life to reduce the financial impact that total fleet replacement would have on barge owners. Another proposed alternative was to specify a date after which owners and operators could not use single-hull barges.

Because of the extensive negative comments from the towing industry, we did not impose the double-wall construction requirement for new tank barges at that time. Instead, the Coast Guard initiated two studies. The first, "Alternative Inland Tank Barge Designs for Pollution Avoidance," developed design and construction alternatives and evaluated them for effectiveness. The second, "Tank Barge Study," evaluated design, construction, and equipment standards for tank barges that carry oil. These studies have convinced the Coast Guard that a double-hull tank barge fleet is necessary to prevent pollution due to hull damage.

The comments we received in response to the 1971 NPRM indicated that, while the industry supported the intent of the regulations to prevent pollution, it strongly objected to the methods proposed to accelerate the retirement of existing single-hull vessels and to substitute double-hull barges. We received no comments suggesting economically acceptable ways to accelerate retirement of these vessels.

The Coast Guard is aware that the problems and costs associated with the construction of new barges differ greatly from the problems and costs associated with modifying existing barges. For this reason, following the 1971 proposal, the Coast Guard split this rulemaking into two parts: an ANPRM asking for comments on how to reduce the pollution problem posed by the existing fleet, and an NPRM proposing construction standards for new barges.

The present barge fleet consists of about 1,200 full double-hull barges, 2,200 single-hull barges, and 428 barges with partial double skins. Hastening the retirement of single-hull barges could significantly affect both the economic viability of many individual tank barge operators and the tank barge industry's ability to respond to the Nation's need to transport bulk liquid cargo. The alternatives we considered in the ANPRM are early retirement of vessels, conversion to other service, restriction of routes, increased Coast Guard inspection standards, and reduction of the numbers of barges towed together as a single unit.

In the case of new construction, the NPRM proposed two alternatives to the double-hull approach: (1) taking no action or (2) requiring the use of heavier internal structures in either selected areas of the vessel or overall to make the hulls more resistant to penetration. We selected the double-hull alternative as a result of information gathered in a joint Coast Guard/Maritime Administration study known as the "1974 Tank Barge Study," which indicated that this was the most effective method.

Because any action taken on these two items would have a profound effect on the environment and the economy of the towing industry, we decided to hold a series of hearings on both the ANPRM and the NPRM in various parts of the country. Responses at the hearings addressed both the ANPRM and the NPRM, without distinguishing between them.

In general, the comments advocated the following alternatives:

- (A) Do not retire existing equipment.
- (B) Require constructing single-hull barges with heavier materials.
- (C) Require more stringent inspection and vigorous enforcement of existing regulations.

In addition, industry representatives questioned the effectiveness of double hulls in preventing pollution.

These issues are valid and deserve further consideration. The Coast Guard has decided that an independent agency should evaluate the proposed alternatives. In addition, industry estimates of costs differ greatly from Coast Guard estimates. Industry estimates are higher by far. In light of the industry data, the Coast Guard will have to reexamine the anticipated economic effects of the proposal. Consequently, the National Academy of Sciences will reexamine the entire tank barge issue and recommend various options to accomplish the Coast Guard's objective.

Summary of Benefits

Sectors Affected: Builders of tank barges; aquatic environment for wildlife; and the general public.

The Coast Guard has concluded that double hulls would be 95 percent effective in preventing pollution due to hull damage. This conclusion is based on the report we mentioned previously, the "1974 Tank Barge Study."

The benefits to the general public are impossible to quantify. There would be some reduction in the amount of oil in the water, which would have an aesthetic value for those using the waterways for recreational purposes. However, the actual improvement in the

aquatic environment for wildlife is difficult to determine, because destruction done to plants and animals depends upon such factors as how much oil is spilled and how quickly and at what time of year. The success of subsequent cleanup efforts also has a direct bearing upon how much environmental damage is done. A relatively large spill that occurs in protected waters and is promptly cleaned up could have very little impact on the quality of the water while representing a statistically significant pollution incident. All parties involved with this proposal agree that reduced oil pollution is a desirable goal, but there are no ways to measure the benefits.

Shipyards that manufacture barges would benefit from an increased demand for construction and servicing.

Summary of Costs

Sectors Affected: Water transportation of oil tank barges; towing services; builders of tank barges; and users of oil.

In 1978, the cost of a double-hull inland tank barge ranged from \$146,000 to \$425,000 more than for a single-hull inland barge of comparable size. Added costs for full double hulls on ocean barges ranged from \$700,000 to \$1,700,000 for each barge.

The costs for modifying existing barges are more difficult to determine. The proposals in the ANPRM are estimated at approximately \$222 million (in current dollars), or a 31 percent increase over present expenses for the tank barge industry. The ANPRM solicited estimates of these costs as well as costs the industry would incur for activities such as oil recovery and cleanup resulting from spills related to hull damage. Comments received indicated industry estimates for increased expenses were several times the Coast Guard estimates. In addition, repair costs for double-hull barges would be much more expensive because the space between the hulls is difficult to work in and must be freed from toxic and explosive gas before any work can be done on the barge's hull. The comments also failed to show any offsetting savings resulting from decreased cleanup costs. Compliance costs would be passed on to the consuming public.

We do not anticipate any significant administrative costs associated with the proposal.

Related Regulations and Actions

Internal: The Coast Guard is also considering double-hull requirements as a possible solution to spilling hazardous materials.

External: None.

Active Government Collaboration

The Coast Guard has informed the Environmental Protection Agency, the Maritime Administration, and the National Oceanographic and Atmospheric Administration of its regulatory proposals.

Timetable

The National Academy of Sciences held a workshop on these proposals on April 15 and 16, 1980. The Academy is developing recommendations for the Coast Guard; its report is due in January 1981. We will defer any further action until we have evaluated these recommendations and any new economic information.

Available Documents

Karlson, E. S., et al., "Alternative Inland Tank Barge Designs for Pollution Avoidance," May 22, 1974.

"Polluting Incidents In and Around U.S. Waters," annual reports for 1971 through 1977. Coast Guard publication number C.G. 487.

Joint Coast Guard/Maritime Administration Study, "Tank Barge Study," October 1974. National Technical Information Service number COM-75-10284/AS.

Bender, A., et al., "Tank Barge Oil Pollution Study," prepared for the Coast Guard by Automation Industries, Inc., 1978.

NPRM—36 FR 24960, December 24, 1971 (superseded).

NPRM—44 FR 34440, June 14, 1979, for new construction.

ANPRM—44 FR 34443, June 14, 1979, for existing construction.

Supplementary NPRM—45 FR 16438, March 13, 1980, for both proposals.

Draft Regulatory Analysis and Environmental Impact Statement, "Design Standards for New Tank Barges and Regulatory Analysis for Existing Tank Barges to Reduce Oil Pollution Due to Accidental Hull Damage, May 1979." Documents available from Agency Contact.

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ENVIRONMENTAL PROTECTION AGENCY

Office of Air, Noise, and Radiation

Regulations for the Prevention of Significant Deterioration (PSD) from Set II Pollutants (Hydrocarbons, Carbon Monoxide, Nitrogen Oxide, Ozone, and Lead) (40 CFR 51.24* and 52.21*)

Legal Authority

The Clean Air Act, as amended, § 166, 42 U.S.C. § 7476.

Reason for Including This Entry

The regulation, when developed and promulgated, is likely to impose siting restrictions on air pollution sources because of limitations on areawide emission totals. This could have a significant effect on industry.

Statement of Problem

The purpose of this program is to provide for adequate representation of the public interest where the Nation's clean air resources are threatened by increases in concentrations of Set II pollutants (hydrocarbons, carbon monoxide, nitrogen oxides, ozone, and lead). The present Prevention of Significant Deterioration (PSD) regulations administered by the Environmental Protection Agency (EPA) require the use of "best available control technology" (BACT) on all new or modified major sources of all pollutants covered by the Clean Air Act. In addition the present program also limits increases in areawide concentrations of sulfur dioxide and particulate matter through an air quality increment system, which limits the amount of emission increases based on air quality impact. The present program, however, does not similarly limit areawide emission levels or air quality impacts of Set II pollutants and, therefore, cannot protect against the degradation of air quality up to the National Ambient Air Quality Standards (NAAQS). (i.e., those levels of air quality set to prevent health and welfare effects). The Clean Air Act, as amended in 1977, requires EPA to respond to this problem (42 U.S.C. 7476).

Alternatives Under Consideration

EPA is now reviewing a range of regulatory alternatives which appear to be most reasonable at this time. These alternatives include the following:

(A) Existing Emissions Controls Only—This system would rely primarily on the requirements for best available control technology (BACT) on major new stationary sources and the Federal

standards for motor vehicle emissions. Control requirements under this system would not vary as a function of ambient pollutant concentrations or of the proximity of other sources, as long as the National Ambient Air Quality Standards were not violated.

(B) Ambient Air Quality Allocation.

Ambient Air Quality Increments—This approach would call for the States to develop an area classification system establishing numerical limits for allowable degradation of ambient air quality. This system would be similar to that already in effect for particulate matter and sulfur dioxide.

(C) Emission Allocation.

(1) Emission Density Zoning (EDZ)—An EDZ system would set theoretical ambient air quality increments to serve only as a guideline for establishing limits on maximum allowable emissions per unit land area. Once EPA established these emissions density limits, the appropriate State or local air pollution control agency would base preconstruction review of new and modified sources on the emission density limits rather than on ambient air quality.

(2) Inventory Management—This system would require State and local agencies to develop and maintain detailed emission inventories, with the provision for mandatory periodic public review whenever the local emission inventory increased by a pre-established quantity or percentage. The system would require this public review before allowing any further incremental increase in emissions, and could include an environmental analysis, a community environmental education program, a public hearing, and a vote by elected officials from the potentially affected areas.

(D) Empirical Criteria.

(1) Co-location of hydrocarbon (HC) and nitrogen oxide (NO_x) Sources (Avoidance of Juxtaposed Major Sources of Hydrocarbons and Nitrogen Oxides)—We would design this approach to prevent significant deterioration in air quality from high ozone levels (ozone results when HC and NO_x combine). Such a program would focus special attention on the hydrocarbon/nitrogen dioxide ratio and would prevent the location of major sources within a certain fixed distance of each other.

(2) Transportation BACT—This alternative would require means to reduce emissions associated with motor vehicle-related sources. These means could involve specifications for road systems or performance standards for public transportation systems, such as specified levels of service for public

transportation. EPA also could consider additional criteria for existing transportation processes and inspection and maintenance.

(3) Indirect Source Review for Federally Funded Projects—The Clean Air Act precludes EPA from requiring states to perform indirect source reviews of non-federally funded projects; therefore, this alternative would require indirect source review for Federally owned, funded or assisted projects. These projects could include airports, highways, sport complexes, and other projects constructed with Federal grants.

EPA is also investigating economic allocation schemes to use in conjunction with the above described regulatory alternatives. The specific programs we are considering at this time are emission fees and marketable permits.

The final regulation may include parts of several control methodologies in conjunction with empirical criteria and/or economic allocation schemes, or may present several options from which a State would choose its specific program.

Summary of Benefits

Sectors Affected: The general public.

Areas of the country which are presently attaining the NAAQS for carbon monoxide, nitrogen dioxide, ozone, and lead will have a program to prevent significant air quality deterioration from those pollutants. In addition, regulations will provide special protection to national parks, national wilderness areas, and other Class I areas.

These regulations are at such an early stage of development that we cannot yet quantify benefits and costs. The benefits will vary depending on the alternative or alternatives we select. The regulations are unlikely to impose additional direct emission control requirements on air pollution sources, but they may impose siting restrictions because of limitations on areawide emission totals. Once we complete the Regulatory Analysis, we will have a better estimate of the benefits and costs associated with this regulation.

Summary of Costs

Sectors Affected: Industries emitting Set II pollutants, including: transportation, electric services, and manufacturing (particularly the petroleum refining and the primary metal industries).

We do not anticipate that the regulation will affect small businesses disproportionately. The Regulatory Analysis will, however, specifically address this problem.

As we noted above, we will assess the costs of implementing these regulations as a part of the Regulatory Analysis. We already require the affected sources under the present PSD regulations to install the best available control technology (40 CFR 51.24 and 40 CFR 42.21). Therefore, the costs (decline in economic growth, regional costs, etc.) resulting from this regulation alone will be related only to site location.

Related Regulations and Actions

Internal: EPA has developed and currently administers regulations for the prevention of significant deterioration of air quality resulting from emissions of particulate matter and sulfur dioxide (40 CFR 51.24). The same regulations also require best available control technology on the sources potentially affected by this regulation.

External: The regulation will require each State to develop regulations to implement this program. These regulations will require EPA review and approval.

Active Government Collaboration

EPA has formed an interagency work group to assist it in the development and review of these regulations. The following are members of the workgroup: Department of Transportation, Department of Energy, Department of Interior (National Park Service, Fish and Wildlife Service, and Bureau of Land Management), Department of Commerce, Department of Housing and Urban Development, Department of Agriculture, and Council on Environmental Quality. In addition, we have solicited and received cooperation from State governments through the State and Territorial Air Pollution Program Administrators, and local agencies through the Association of Local Air Pollution Control Officers.

Timetable

Regulatory Analysis—May 1981.
NPRM—August 1981.
Public Hearing—September 1981.
Public Comment Period—October 1981.
Final Rule—April 1982.

Available Documents

"Program to Prevent Significant Deterioration of Carbon Monoxide, Ozone, Hydrocarbons, Nitrogen Dioxide and Lead," (EPA report number EPA-450/2-80-071, March 1980) available from NTIS Accession No. PB80-221260.

"Community Environmental Education: Three Models of Organization for PSD Set II," (report for public review, June 1980), available from Nancy Mayer, Control Programs

Development Division, MD-15, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

EPA has established a docket (EPA, Central Docket Section A-79-34) for review of the PSD Set II regulations.

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EPA-OANR

Review, and Possible Revision, of the National Ambient Air Quality Standard for Carbon Monoxide (40 CFR Part 50*)

Legal Authority

Clean Air Act, as amended,
§ 109(d)(1), 42 U.S.C. § 7409 *et seq.*

Reason for Including This Entry

The Environmental Protection Agency (EPA) believes that this review is important in order to ensure the protection of public health and welfare and because any changes to the existing standards may result in an annual effect of \$100 million or more on the economy.

Statement of Problem

Section 109(d)(1) of the Clean Air act as amended directs EPA to review existing national ambient air quality standards (NAAQS) every 5 years. Ambient air quality standards define allowable pollutant concentrations in the ambient air that are required to protect public health and welfare. EPA set the original carbon monoxide (CO) standards (April 30, 1971, 36 FR 8186) at 9 parts per million (ppm) averaged over an 8-hour period and 35 ppm for a 1-hour period. On August 18, 1980 (45 FR 55066), the Agency proposed to retain the 9 ppm 8-hour standard and lower the 1-hour standard to 25 ppm. At that time, EPA also proposed to modify the form of the two standards to a daily maximum interpretation for exceedances of the standard.

The incidence of adverse health effects in the general population resulting from human exposure to carbon monoxide has not been completely quantified. However, there are several population groups that are particularly sensitive to carbon monoxide exposure, such as people with coronary heart disease (e.g., angina pectoris), peripheral vascular disease, cerebrovascular disease, or chronic obstructive pulmonary disease; pregnant women and their fetuses; and people with anemia. These sensitive population

segments range from 5 to 12 percent of the U.S. population. Thus, between 11 million and 27 million persons in the United States with cardiovascular, pulmonary, and central nervous system diseases can have these conditions aggravated by exposure to carbon monoxide.

Alternatives Under Consideration

The Agency considered the following alternative standards prior to the August 18, 1980 Proposal:

1-hr averaging time	8-hr averaging time
15 ppm.....	7 ppm
25 ppm.....	9 ppm
35 ppm.....	12 ppm

EPA originally selected the 8-hour averaging time because most people achieve equilibrium or near-equilibrium levels of carboxyhemoglobin (COHb) in the blood after an 8-hour exposure to carbon monoxide. In addition, most people are exposed to carbon monoxide in roughly 8-hour blocks of time. We uncovered no evidence during the review process resulting in the August 18, 1980 NPRM that indicated that the 8-hour averaging time should be changed.

As a result of the review and revision of the health criteria, EPA proposes to retain the existing primary 8-hour standard at 9 ppm and to lower the primary 1-hour standard to 25 ppm. The change in the 1-hour standard is being proposed because of the more rapid accumulation of blood carboxyhemoglobin in moderately exercising sensitive persons compared to resting individuals. The impact of exercise, which is greater for short-duration exposures, was not considered in the original standard.

We are investigating no new Federal regulatory techniques in the CO NAAQS review process. State governments use their own discretion in taking regulatory actions to meet EPA's national ambient air quality standards. The States are free to use performance standards, economic incentives, or any other means to attain ambient air quality standards within their jurisdiction. The only EPA requirement for State governments is that they demonstrate attainment and maintenance of the NAAQS by statutory compliance dates.

Summary of Benefits

Sectors Affected: Persons with cardiovascular or pulmonary disease; pregnant women and fetuses; and anemics.

The newly proposed CO NAAQSs should result in a greater assurance that persons with cardiovascular heart disease will not experience deleterious health effects due to high ambient concentrations of carbon monoxide. Specifically, the two standards are intended to keep 99 percent of the sensitive population affected by cardiovascular heart or peripheral vascular disease below a COHb level of 2.1 percent.

Summary of Costs

Sectors Affected: Manufacturing of motor vehicles and motor vehicle equipment; administration of State and local transportation programs; the driving public; EPA; and State air pollution control agencies.

In its regulatory impact analysis, EPA estimated the 1987 annualized costs of various CO control strategies for the three 8-hour alternatives; the total nationwide cost in 1979 dollars is approximately \$2.8 billion for the 9 ppm proposed standard. It is \$2.9 billion for the 7 ppm alternative and \$2.6 billion for the 12 ppm alternative. Costs for alternative 1-hour standards were not developed because control strategies needed to attain any of the three alternative 8-hour standards investigated automatically attain all of the 1-hour standards that EPA analyzed.

Related Regulations and Actions

Internal: The newly proposed CO NAAQSs will not affect any other Agency program since there is no change in the controlling 8-hour standard. Emission standards for moving sources will not be affected since they are established under Title II of the Clean Air Act (42 U.S.C. § 7501 *et seq.*).

External: The newly proposed CO NAAQSs will not alter any on-going or planned State, local, or private industry control program since there is no change in the controlling 8-hour standard.

Active Government Collaboration

Other Federal agencies that are involved in reviewing the standard include the Departments of Transportation, Energy, and Health and Human Services. In addition, EPA has contacted the Interagency Regulatory Liaison Group (IRLG) and will involve them in the Standard review. The IRLG functions to coordinate the regulatory authorities of the Environmental Protection Agency, Food and Drug Administration, Consumer Product Safety Commission, Occupational Safety and Health Administration, and the Food Safety and Quality Service, Department of Agriculture.

Timetable

Final Rule—Spring 1981.

Available Documents

ANPRM—"Review of the Carbon Monoxide Air Quality Standard," 43 FR 56250, December 1, 1978.

NPRM—"Carbon-Monoxide. Proposed Revisions to the NAAQS," 45 FR 55066, August 18, 1980.

"Air Quality Criteria for Carbon Monoxide" (External Review Draft, April 1979); it is available from the Environmental Criteria and Assessment Office, MD-52, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

U.S. Environmental Protection Agency Science Advisory Board Clean Air Scientific Advisory Committee, Subcommittee on Carbon Monoxide, "Transcript of Proceedings" for January 30 and 31, 1979 and June 14-16, 1979.

Public hearing record and public comments (comment period open until November 10, 1980).

The following reports are available from the U.S. EPA Library (MD-35), Research Triangle Park, NC 27711. Telephone: (919) 541-2777 (FTS: 629-2777).

"Control Techniques for Carbon Monoxide Emissions," EPA-450/3-79-006, June 1979.

"Regulatory Impact Analysis of the National Ambient Air Quality Standards for Carbon Monoxide," April 2, 1980.

"Proposed National Ambient Air Quality Standards for Carbon Monoxide: Draft Environmental Impact Statement," July 1980.

"Estimated Exposure to Ambient Carbon Monoxide Concentrations Under Alternative Air Quality Standards (Draft)," August 1980.

"Preliminary Assessment of Adverse Health Effects from Carbon Monoxide and Implications for Possible Modifications of the Standard (Draft)," June 1, 1979.

"Sensitivity Analysis of Coburn Model Predictions of COHb levels Associated with Alternative CO Standards (Draft)," July 1, 1980.

"Significant Harm Levels for Carbon Monoxide (Draft)," July 1980.

EPA has established a docket (EPA, Central Docket Section OAQPS-79-7) for review of this standard. The docket is available for investigation between 9:00 a.m. and 4:00 p.m. on weekdays in the Section Office: Room 2903B, 401 M Street, S.W., Washington, DC.

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EPA-OANR**Review, and Possible Revision, of the National Ambient Air Quality Standard for Nitrogen Dioxide (40 CFR Part 50*)****Legal Authority**

Clean Air Act, as amended, §§ 109(c) and 109(d), 42 U.S.C. § 7409 *et seq.*

Reason for Including This Entry

The Environmental Protection Agency (EPA) believes that this review is important to ensure protection of public health and welfare and because any changes to the existing standards may result in an annual effect of \$100 million or more on the economy.

Statement of Problem

Section 109(c) of the Clean Air Act, as amended, directs EPA to promulgate a short-term nitrogen dioxide (NO₂) standard unless there is no significant scientific evidence that such a standard is needed to protect public health. Section 109(d)(1) of the Act requires EPA to review the scientific basis of existing National Ambient Air Quality Standards (NAAQS) every 5 years. (Ambient air quality standards define allowable pollutant concentrations in the ambient air that are required to protect public health and safety. The States are responsible for developing and implementing the necessary regulatory programs to ensure the attainment and maintenance of the NAAQS.) This review includes the existing NO₂ annual average standard promulgated by EPA on April 30, 1971 (36 FR 8186). The standard is 100 micrograms per cubic meter (µg/m³), annual arithmetic mean (40 CFR 50.11). The Agency has combined possible proposal of a short-term NO₂ standard with review of the annual average NAAQS into one rulemaking process (see 45 FR 6959, January 31, 1980). After review of scientific bases for the standards (the air quality criteria), EPA will decide whether to propose a short-term NO₂ standard and change or reaffirm the existing annual NO₂ NAAQS.

Public exposure to NO₂ can result in impairment of pulmonary (lung) function and can increase susceptibility to respiratory infection. NO₂ or other nitrogen oxide compounds in the ambient air can adversely affect crops, visibility, and materials, and can cause acid rainfall. Acid rainfall adversely

affects crops, materials, and aquatic ecosystems.

Alternatives Under Consideration

Based on revised air quality criteria, EPA may decide to keep the existing annual standard without change, or make some modification to the allowable air concentration of nitrogen dioxide, the period over which the concentration is measured or the number of times States will be allowed to exceed the standards. The Agency may also decide to propose a short-term NO₂ standard.

We are investigating new regulatory techniques in the NO₂ NAAQS review/standard-setting process. All governmental regulatory actions taken as a result of setting an NAAQS are at the discretion of State governments. They are free to use performance standards, economic incentives, or any other means to attain ambient air quality standards within their jurisdictions. The only EPA requirement for State governments is that they demonstrate attainment and maintenance of the NAAQS by statutory attainment dates.

Summary of Benefits

Sectors Affected: The general public, particularly those persons suffering from respiratory disease; agriculture; and the aquatic ecosystem.

Revision of air quality criteria and review of the existing ambient air standard will result in greater assurance that the standard which EPA reaffirms or newly promulgates will protect public health and welfare, crops, materials, and aquatic ecosystems.

Summary of Costs

Sectors Affected: Industries emitting nitrogen oxides, such as manufacturing, electric services, and natural gas pipelines; manufacturing of motor vehicles and motor vehicle equipment; regulation and administration of transportation programs; EPA; and State air pollution control agencies.

We will assess the costs and economic effects of controlling oxides of nitrogen for alternative short-term and annual standards at the time we propose a revised standard. In addition, EPA will also assess the impact on State air pollution control agencies of developing and modifying control programs to attain and maintain a possible short-term and annual NO₂ standard. The Agency will publish these assessments in a regulatory impact analysis that will be issued simultaneously with the NPRM.

The costs may exceed \$100 million annual impact on the economy.

If the Agency's NO₂ activities result in a new regulatory action, the regulation could affect the level of control for sources of nitrogen oxides emissions, such as power plants, industrial boilers, and natural gas pipeline stations. We currently are controlling mobile source emissions under existing emissions limits for motor vehicles; however, a stringent short-term NO₂ standard could result in the need for community-wide inspection and maintenance programs for automobile and truck emissions.

Related Regulations and Actions

Internal: Changes to the current ambient standard may affect EPA's regulations for nitrogen oxides emissions from motor vehicles and EPA regulations for new source review.

External: Modifications in the existing standard may require States to reassess their current implementation control programs and make revisions in control measures and strategies if necessary. A new short-term standard would require States to assess ambient air quality data, and if concentrations exceed the standard, develop a State implementation plan to control NO₂ emissions.

Active Government Collaboration

Other Federal agencies that are involved in reviewing the nitrogen dioxide standards are the Departments of Energy, Transportation, Interior, Commerce, and Health and Human Services, and the Tennessee Valley Authority. In addition, we have informed the Interagency Regulatory Liaison Group (IRLG) of this review. The IRLG functions to coordinate the regulatory authorities of the Environmental Protection Agency, Food and Drug Administration, Consumer Product Safety Commission, Occupational Safety and Health Administration, and the Food Safety and Quality Service, Department of Agriculture.

Timetable

NPRM—Spring 1981.
Regulatory Analysis—Spring 1981.
Public Comment Period—To be specified in NPRM.
Public Hearings—60 days after publication of NPRM.
Final Rule—Fall 1981.

Available Documents

"Air Quality Criteria for Nitrogen Dioxide" (external review draft, annotated version, June 1980), available from the Environmental Criteria and Assessment Office (ECAO), U.S.

Environmental Protection Agency, MD-52, Research Triangle Park, NC 27711.

U.S. Environmental Protection Agency, Science Advisory Board, Clean Air Scientific Advisory Committee, Committee Meeting on Air Quality Criteria for Oxides of Nitrogen, "Transcript of Proceedings" conducted in Washington, DC on January 29 and 30, 1979; available from ECAO.

"Control Techniques for Nitrogen Dioxide Emissions" (draft, January 1978), available from Emission Standards and Engineering Division, U.S. Environmental Protection Agency, MD-13, Research Triangle Park, NC 27711.

"National Ambient Air Quality Standards: Establishment of Standard Review Docket for Nitrogen Dioxide," 45 FR 6958, January 31, 1980.

EPA has established a docket (EPA, Central Docket Section OAQPS-78-9) for review of the NO₂ standard. Reports in the docket are available for inspection between 8 a.m. and 4 p.m. on weekdays at the Docket Section Office, Room 2903B, 401 M Street, S.W., Washington, DC.

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EPA-OANR

Review, and Possible Revision, of the National Ambient Air Quality Standards for Particulate Matter (40 CFR Part 50*)

Legal Authority

The Clean Air Act, as amended, § 109(d)(1), 42 U.S.C. § 7409 *et seq.*

Reason for Including This Entry

The Environmental Protection Agency (EPA) believes that this review is important to ensure the protection of public health and welfare, and because any changes to the existing standards may result in an annual effect of \$100 million or more on the economy.

Statement of Problem

Section 109(d) of the Clean Air Act Amendments of 1977 directs EPA to review the existing National Ambient Air Quality Standards (NAAQS) every 5 years. Ambient air quality standards define the level of pollutant concentrations in the ambient air that are allowed while still protecting public health and safety. The current primary

standard for particulate matter (to protect public health) is 75 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), annual geometric mean, and 260 $\mu\text{g}/\text{m}^3$, maximum 24-hour concentrations, not to be exceeded more than once per year. The current secondary standard for particulate matter (to protect public welfare, e.g., effects on soils, vegetation, man-made materials, visibility, economic values, etc.) is 150 $\mu\text{g}/\text{m}^3$, maximum 24-hour concentration, not to be exceeded more than once per year. The States are responsible for developing and implementing the necessary regulatory programs to ensure the attainment and maintenance of the NAAQSs.

EPA will review the scientific basis of the primary and secondary standards (the air quality criteria), as well as the standards themselves. Where appropriate, EPA will revise the air quality criteria and promulgate new standards.

Exposure to airborne particulate matter (PM) aggravates asthma and other respiratory disorders, as well as cardiovascular diseases, and can impair pulmonary function; this exposure can also increase coughing and chest discomfort. PM may also increase the adverse health effects of gaseous air pollutants, such as sulfur dioxide. Depending on their chemical composition, specific types of PM may have more serious toxic or carcinogenic effects than others. Elevated PM levels result in increased soiling of exposed materials and impair visibility.

Alternatives Under Consideration

On the basis of the revised air quality criteria, EPA may decide to keep the existing standards without change or, alternatively, may decide to change the allowable air concentration of particulate matter, the period over which the concentration is measured, or the number of allowable exceedances of the standards. EPA is also considering standards based on the size of the particulate as well as its concentration. This consideration is based on evidence that smaller particles penetrate deeper into the lung and evidence that when elevated concentrations of particulate matter occur in combination with elevated levels of sulfur oxides, adverse health effects may be more pronounced.

EPA is not investigating new Federal regulatory techniques in the NAAQS review and revision process. All governmental regulatory actions taken as a result of setting an NAAQS are at the discretion of State governments, which are free to use performance standards, economic incentives, or any other means to attain ambient air

quality standards within their jurisdiction. The only EPA requirement for State governments is that they attain and maintain the NAAQSs by statutory compliance dates.

Summary of Benefits

Sectors Affected: The general public, including children and those persons suffering from respiratory diseases and cardiovascular diseases.

The revision of the air quality criteria and the review of the existing ambient standards will result in greater assurance that the standards, whether reaffirmed or newly promulgated, will adequately protect health and welfare of the general public, including those groups within the general public most sensitive to adverse health effects of PM.

Summary of Costs

Sectors Affected: Industries emitting particulate matter, including (1) electric, gas, and sanitary services, (2) the non-ferrous metal industry, and (3) those industries that use or supply large quantities of fossil fuels; and State air pollution control agencies.

EPA will complete a study of costs and economic impacts of controlling particulate matter under alternative standards when it issues the NPRM. In addition, EPA will also assess the impact on State air pollution control agencies of modifying their control programs to accommodate revisions to the existing standards.

Related Regulations and Actions

Internal: Changes to the current ambient standards for particulate matter may affect EPA's regulations for new source review.

External: Modifications in the existing standards would require States to reassess their current implementation control programs and make revisions in control measures and strategies if necessary.

Active Government Collaboration

Other Federal agencies that are actively involved in reviewing the standards for particulate matter are the Departments of Energy, Transportation, Interior, Commerce, and Health and Human Services; and the Tennessee Valley Authority. In addition, EPA has informed the Interagency Regulatory Liaison Group (IRLG) of this review. The IRLG coordinates the regulatory activities of the Environmental Protection Agency, Food and Drug Administration, Consumer Product Safety Commission, Occupational Safety and Health Administration, and

the Food Safety and Quality Service, Department of Agriculture.

Timetable

NPRM—Fall 1981.
Regulatory Analysis—Fall 1981.
Public Comment Period—To be specified in NPRM.
Public Hearing—60 days after publication of NPRM.
Final Rule—Spring 1982.

Available Documents

ANPRM—"National Ambient Air Quality Standards; Review of Criteria and Standards for Particulate Matter and Sulfur Oxides," 44 FR 192, October 2, 1979.

"Air Quality Criteria for Particulate Matter," AP-49, January 1969, available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

"Health Effects Considerations for Establishing a Standard for Inhalable Particles," July 1978, available from the Health Effects Research Laboratory, Environmental Protection Agency, Research Triangle Park, NC 27701.

"Airborne Particles," National Academy of Sciences, 1977, available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

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EPA-OANR

Review, and Possible Revision, of the National Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide (40 CFR Part 50*))

Legal Authority

The Clean Air Act, as amended, § 109(d)(1), 42 U.S.C. § 7409 *et seq.*

Reason for Including This Entry

The Environmental Protection Agency (EPA) believes that this review is important in order to ensure the protection of public health and welfare, and because any changes to the existing standards may result in an annual effect of \$100 million or more on the economy.

Statement of Problem

Section 109(d) of the Clean Air Act Amendments of 1977 directs the EPA to review the existing National Ambient Air Quality Standards (NAAQS) every 5

years. Ambient air quality standards define allowable pollutant concentrations in the ambient air that are allowed while still protecting public health and welfare. The present primary standard for sulfur oxides measured as sulfur dioxide (set to protect public health) is 80 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), annual arithmetic mean, and a maximum 24-hour concentration of 365 $\mu\text{g}/\text{m}^3$, not to be exceeded more than once per year. The current secondary standard for sulfur oxides measured as sulfur dioxide (to protect public welfare e.g., effects on soils, vegetation, man-made materials, visibility, economic values, etc.) is 1300 $\mu\text{g}/\text{m}^3$, with the maximum 3-hour concentration not to be exceeded more than once per year. The States are responsible for developing and implementing the necessary regulatory programs to ensure the attainment and maintenance of the NAAQSs.

EPA will review the scientific basis of the standards (the air quality criteria), as well as the standards themselves. Where appropriate, EPA will revise the air quality criteria and promulgate new standards.

Sulfur oxides in the air, working alone or in combination with other pollutants, aggravate respiratory diseases such as asthma, chronic bronchitis and emphysema, and also irritate the eyes and respiratory tract. Sulfur oxides also cause impaired visibility and help form acid rain, which adversely affects crops, materials, and aquatic ecosystems.

Alternatives Under Consideration

On the basis of the revised air quality criteria, EPA may decide to keep the existing standards without change or, alternatively, may alter the air concentration of sulfur dioxide or the period over which the concentration is measured.

EPA is investigating no new Federal regulatory techniques in the NAAQS review and revision process. All governmental regulatory actions taken as a result of setting an NAAQS are at the discretion of State governments. They are free to use performance standards, economic incentives, or any other means to attain ambient air quality standards within their jurisdiction. The only EPA requirement for State governments is that they attain and maintain the NAAQSs by statutory compliance dates.

Summary of Benefits

Sectors Affected: The general public, including children and those persons suffering from respiratory diseases; and agriculture.

The revision of the air quality criteria and the review of the existing ambient standards will result in greater assurance that the standards, whether reaffirmed or newly promulgated, will adequately protect the health and welfare of the general public, including those most sensitive to adverse health effects of sulfur oxides.

Summary of Costs

Sectors Affected: Industries emitting sulfur dioxides, including (1) electric, gas, and sanitary services industries, (2) the non-ferrous metal industry, (3) the petroleum refining industry, and (4) those industries that supply or use large quantities of fossil fuel; and State air pollution control agencies.

A study of costs and economic impacts of controlling sulfur oxides under alternative standards will be completed by EPA when the NPRM is issued. In addition, EPA will also assess the impact on State air pollution control agencies of modifying their control programs in order to accommodate any revisions to existing standards.

Related Regulations and Actions

Internal: Changes to the current ambient standards may affect EPA's regulations for new source review.

External: Modifications in the existing standards would require States to reassess their current implementation control programs, and make revisions in control measures and strategies if necessary.

Active Government Collaboration

Other Federal agencies that are actively involved in reviewing the sulfur oxide standards are the Departments of Energy, Transportation, Interior, Commerce, and Health and Human Services; and the Tennessee Valley Authority. In addition, EPA has informed the Interagency Regulatory Liaison Group (IRLG) of this review. The IRLG coordinates certain regulatory activities of the Environmental Protection Agency, Food and Drug Administration, Consumer Product Safety Commission, Occupational Safety and Health Administration, and the Food Safety and Quality Service, Department of Agriculture.

Timetable

NPRM—Fall 1981.
Regulatory Analysis—Fall 1981.
Public Comment Period—To be specified in NPRM.
Public Hearing—60 days after publication of NPRM.
Final Rule—Spring 1982.

Available Documents

ANPRM—"National Ambient Air Quality Standards; Review of Criteria and Standards for Particulate Matter and Sulfur Oxides," 44 FR 56730, October 2, 1979.

"Air Quality Criteria for Sulfur Oxides," AP-50, January 1969—available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

"Sulfur Oxides," National Academy of Sciences, 1978—available from the National Academy of Sciences, Printing and Publication Office, 2101 Constitution Avenue, Washington, DC 20418.

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EPA-OANR**Standards of Performance to Control Atmospheric Emissions from Industrial Boilers (40 CFR Part 60*)****Legal Authority**

The Clean Air Act, as amended, § 111, 42 U.S.C. § 7411.

Reason for Including This Entry

The Environmental Protection Agency (EPA) believes this rule would be important because it would affect many industries, address a major air polluter, namely industrial boilers, and minimize emissions in the face of increased industrial use of coal. The impact of this regulation on industry would approach \$100 million per year for additional capital and annualized costs by 1990.

Statement of Problem

Combustion of coal, oil, and gas in industrial boilers results in the emission of significant quantities of particulate matter, sulfur dioxide, and nitrogen oxides to the atmosphere. Because of the large number of boilers and the associated emission rates, industrial boilers contribute significantly to air pollution in the United States. In 1975, emissions from industrial boilers were estimated to include 2.77 million tons of particulate matter, 3.25 million tons of sulfur dioxide, and 2.01 million tons of nitrogen oxides or approximately 17, 11, and 8 percent of total national emissions of these pollutants. The projected growth rate of the use of industrial

boilers, coupled with the emphasis on shifting fuel from gas and oil to coal, will increase the potential for emissions. These air pollutants affect the health and welfare of most of our urban-dwelling citizens by contributing to respiratory disease in people and animals, reducing visibility in the atmosphere, damaging vegetation, and soiling and deteriorating real estate. Failure to provide more effective control of emissions from industrial boilers will increase exposure to the undesirable effects of these pollutants and will expand the portions of the country that exceed EPA's ambient standards for these pollutants. This rule will apply to new and modified industrial boilers. Only the largest industrial boilers are presently covered by § 111 standards; these apply only to new and modified units. Existing industrial boilers are required to meet State and local regulations which usually limit sulfur dioxide and particulate emissions. Section 111 regulations are expected to incorporate limits for nitrogen oxides and limits for sulfur dioxide and particulate that are more stringent than State and local regulations.

Alternatives Under Consideration

The 1977 Clean Air Act requires that EPA adopt standards of performance for stationary sources of air pollution that are fired by fossil fuels. EPA is gathering information on eight technologies for reducing boiler emissions of three pollutants: (1) oil cleaning and use of existing clean oil, (2) coal cleaning and existing clean coal, (3) synthetic fuels, (4) fluidized bed combustion (a relatively new technology applicable only to large coal-fired boilers), (5) particulate control, (6) flue gas desulfurization, (7) nitrogen oxides combustion modification, and (8) nitrogen oxides flue gas treatment.

We are examining several control alternatives which include different levels of control for three pollutants being studied. Computer modeling is being used to determine the cost impacts, emission impacts, effects upon fuel consumption, overall energy impacts, and other environmental effects on a regional and national basis.

Summary of Benefits

Sectors Affected: Manufacturing industries; and the general public.

This rule will apply to new and modified industrial boilers used in a large number of manufacturing industries, particularly energy-intensive industries, such as glass (SIC 321, 322, 323), pulp and paper (SIC 261, 262, 263), and chemical manufacturing (SIC 281), and will affect people in urban and rural

areas who are subject to pollution emissions from these industries.

Installing equipment that represents the best available control technology at new and modified industrial boiler facilities will help lessen air pollution in already affected areas and preserve clean air in as yet unpolluted areas of the country. Since only a small fraction of the industrial boiler population is replaced or modified annually, the short term impact on air quality will be only nominal. However, annual reductions in emissions will be cumulative resulting in significant betterment of air quality over the long term. Equipping new boilers with best available control technology will reduce the need for using the "cleanest" fuels, which can be diverted to existing plants in which new add-on controls are less cost effective.

A regulation that requires more stringent controls on new and modified industrial boilers will allow industrial expansion and economic growth without an accompanying assault on ambient air quality.

Summary of Costs

Sectors Affected: Manufacturing industries; and users of products produced by these industries.

Energy intensive industries such as glass (SIC 321, 322, 323), pulp and paper (SIC 261, 262, 263), and chemical manufacturing (SIC 281) are the specific industries that this rule would affect most.

Cost estimates for applying the control technology required by a regulation governing emissions from industrial boilers would be determined by the number, sizes, and types of sources we regulate and the degree of control we require. EPA estimates that by 1990, annual added capital costs of control will approach \$200 million and annualized costs will approach \$100 million (1978 dollars). These estimates are necessarily very tentative at this time. Consumers may pay higher prices for products manufactured by energy-intensive industries.

Related Regulations and Actions

Internal: We have issued water pollution regulations in the form of "Best Practical Technology Currently Available" and "Best Available Technology Economically Achievable." Industrial boilers are also subject to requirements of the Resource Conservation and Recovery Act, Part 261, Subpart C.

External: Industrial boilers are subject to the Power Plant and Industrial Fuel Use Act and associated regulations established by the Department of Energy.

Active Government Collaboration

Because emissions from industrial boilers come from the combustion of fossil fuels, EPA is working closely with the Department of Energy to share information and stimulate advances in technology.

EPA works closely with State and local governments in developing and implementing these rules.

Timetable

Regulatory Analysis—July 1981.

NPRM—July 1981.

Public Hearing—March 1981.

Final Rule—December 1981.

Available Documents

ANPRM—40 CFR 60 (44 FR 37632, June 28, 1979).

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EPA-OANR—Office of Mobile Source Air Pollution Control**Gaseous Emission Regulations for 1985 and Later Model Year Light-Duty Trucks and Heavy-Duty Engines (40 CFR Part 86*)****Legal Authority**

The Clean Air Act, as amended, § 202, 42 U.S.C. § 7521.

Reason for Including this Entry

The Environmental Protection Agency (EPA) thinks this rule is important because we expect it will have an annual economic impact of more than \$100 million.

Statement of Problem

The Clean Air Act Amendments of 1977 require EPA to establish regulations which require a reduction (from the uncontrolled state) of heavy-duty engine or vehicle emissions of 90 percent for hydrocarbon (HC) and carbon monoxide (CO) in 1983 and 75 percent for oxides of nitrogen (NO_x) in 1985. These amendments also provide EPA with options to either temporarily revise or change the standards under certain conditions. As defined in the Act, heavy-duty vehicles include those trucks over 6,000 pounds gross vehicle weight (GVW); excluded are off-road vehicles, such as farm tractors and construction equipment. This definition overlaps two truck categories as used by EPA. These are light-duty trucks (LDTs), which EPA defines as trucks up to 8,500

pounds GVW and heavy-duty vehicles (HDVs) which include the 8,500 pounds GVW over trucks. We published regulations implementing the mandated reductions in HC and CO emissions for HDVs on January 21, 1980 (45 FR 4136) and for LDTs on September 25, 1980 (45 FR 63734). This entry concerns the regulations implementing the mandated reduction in NO_x.

During high temperature combustion in internal combustion engines, atmospheric nitrogen reacts to form nitric oxide (NO) and a comparatively small amount of nitrogen dioxide (NO₂). In the atmosphere, the NO is converted to NO₂ by direct reaction with oxygen and by photochemical processes. NO₂ in the atmosphere causes visibility restrictions and brownish coloration. Elevated NO₂ levels are also associated with both long-term and short-term health effects on the respiratory system.

Based upon the present annual standard of 0.05 parts per million, EPA has identified several (8 or less) Air Quality Control Regions which are currently exceeding acceptable levels. EPA's analysis of future oxides of nitrogen (NO_x) emissions indicates that current light-duty and heavy-duty vehicle NO_x control strategies will produce some overall NO_x reductions through the mid-1980s, after which annual growth of vehicle sales, industry, and other sources contributing to pollution will begin to dominate. Thus, to even maintain the status quo, further NO_x controls will be needed. Heavy-duty vehicles and light-duty trucks, representing approximately 40 percent of mobile source NO_x emissions, constitute one area where further NO_x control is available on a cost-effective basis. Mobile sources themselves constitute about 30 percent of total NO_x emissions.

Alternatives Under Consideration

In the development of the NO_x standard, EPA will consider the following alternatives:

(A) Implement an NO_x standard that reflects the Clean Air Act's mandated 75 percent reduction.

(B) Implement an oxides of nitrogen standard that is either less stringent or more stringent than the 75 percent reduction required by the Clean Air Act.

EPA is currently evaluating the advantages and disadvantages of both alternatives. The Clean Air Act (as amended August 1977) directs EPA to set an NO_x standard that reflects a 75 percent reduction (from uncontrolled levels), applicable for the 1985 model year. However, Congress incorporated provisions in the Act allowing EPA either to set more stringent standards or

less stringent standards. EPA can make such revisions to the standard if it finds that the emission standards cannot be achieved by available technology at reasonable cost. Of course, as standards are made more stringent, more benefits will accrue. Likewise, as standards become more stringent, costs of compliance will generally increase. The task confronting EPA is one of determining technological capabilities, and balancing costs and benefits.

At the present time, the Agency considers alternative (A) as the most likely option to propose. However, we will continue to address issues such as technological capability and cost as we develop the final rule. It is possible that after analyzing manufacturers' comments, EPA will reconsider alternative (B).

EPA had considered the additional alternative of emission averaging, but has decided to pursue averaging as a separate rulemaking. Under an averaging approach, a manufacturer could achieve compliance to an emission standard by averaging its aggregate fleet emissions. The manufacturer could design some engines to be below the standard and others above it. Conceptually, this approach could increase a manufacturer's flexibility from both a technological and an economic standpoint. Averaging will require a major effort to incorporate the concept into the existing regulations. Since the Clean Air Act requires EPA to promulgate the NO_x rulemaking swiftly, and since we believe the averaging concept will need lengthy analysis and discussion between EPA and the industry and public, we will pursue averaging and NO_x as separate rulemakings. We expect to publish an ANPRM for the averaging concept during the fall of 1980 and will attempt to complete the averaging rulemaking as close as possible to the time of the NO_x final rule.

Summary of Benefits

Sectors Affected: The general public, especially urban populations and persons particularly susceptible to respiratory disease.

Although a thorough and detailed benefit analysis has not been performed yet, we can roughly estimate the environmental impact. A proposed NO_x standard representing a 75 percent reduction from uncontrolled levels would reduce lifetime emissions of an average light-duty truck by 500 pounds, and of an average heavy-duty vehicle by approximately 1 ton and 7 tons for gas and diesel, respectively (compared to vehicles sold under present regulations).

These reductions will yield improvements in excess of 10 percent in average NO_x air quality by 1995.

Summary of Costs

Sectors Affected: Manufacturers of heavy-duty engines and vehicles and light-duty trucks; and purchasers and users of heavy-duty engines and vehicles and light-duty trucks.

This regulation will require the addition of engine emission control hardware and/or engine modifications in order to comply with the proposed NO_x standard. Consequently, to cover the cost of any new hardware or engine modifications, manufacturers will have to increase the price of their products. Although precise cost estimates are not available at this time, we project that the average initial price increase of a light-duty truck will be roughly \$150, while the average initial price increases of heavy-duty vehicles will be roughly \$280 for gasoline engines and \$360 for diesel engines (in 1980 dollars).

Related Regulations and Actions

Internal: Current emission standards for light-duty trucks and heavy-duty engines can be found in "Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines: Certification and Test Procedures," 40 CFR Part 86. Regulations implementing the Department of Transportation light-duty truck fuel economy standards are found in "Fuel Economy of Motor Vehicles," 40 CFR Part 600.

EPA has recently finalized standards and measurement procedures for the control of particulate emissions for diesel-fueled light-duty trucks ("Standard for Emission of Particulate Regulation for Diesel-Fueled Light-Duty Vehicles and Light-Duty Trucks," 45 FR 14496, March 5, 1980). Other related regulations recently finalized are HC and CO emission regulations for 1984 and later model year heavy-duty engines and for 1984 and later light-duty trucks ("Gaseous Emission Regulations for 1984 and Later Model Year Heavy-Duty Engines," 45 FR 4136, January 21, 1980, and "Gaseous Emission Regulations for 1984 and Later Model Year Light-Duty Trucks," 45 FR 63734, September 25, 1980).

In addition to the existing regulations above, EPA is in the process of developing particulate regulations for heavy-duty diesel engines.

External: Light-duty vehicle and light-duty truck fuel economy standards are found in the Department of Transportation "Passenger Automobile Average Fuel Economy Standards," 41 CFR Part 351.

Active Government Collaboration

Department of Transportation, Council on Wage and Price Stability, and Department of Commerce.

Timetable

NPRM—December 1980.

Public Hearing—February 1981.

Public Comment Period—60 days

following publication of NPRM.

Comments may be sent to Central Docket Section A-130, West Tower Lobby, Gallery 1, Environmental Protection Agency, Attn: Docket No. A-80-18, 401 M Street SW., Washington, DC 20460.

Final Rule—December 1981.

Final Rule Effective—January 1982, applicable to model year 1985.

Available Documents

None at this time.

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EPA-OANR-OMSAPC

Heavy-Duty Diesel Particulate Regulations (40 CFR Part 86 *)

Legal Authority

The Clean Air Act, as amended, §§ 202, 206, 207, and 301, 42 U.S.C. §§ 7521, 7525, 7541, and 7601.

Reason for Including This Entry

The Environmental Protection Agency (EPA) thinks that this rule is important because it may have an annual effect of \$100 million or more on the economy.

Statement of Problem

Despite significant gains made in the control of particulate emissions, there are still many regions of the United States that are not able to meet the National Ambient Air Quality Standard (NAAQS) for total suspended particulate matter (TSP). To help improve this situation, Congress required EPA (through the Clean Air Act Amendments of 1977) to prescribe standards for the emission of particulate matter from 1981 model year heavy-duty diesel vehicles. EPA must base this standard on the lowest emission rates that we find technologically feasible at the time the standard will take effect, while also taking cost, noise, energy, and safety into consideration.

Diesel engines already power one-third of the heavy-duty vehicles sold in this country. By 1995, EPA expects this

figure to increase to over two-thirds, primarily because of the fuel economy advantage of diesel engines over gasoline engines. These diesels emit 40 to 100 times the particulate matter emitted by catalyst-equipped vehicles operated on unleaded gasoline. (EPA expects that most gasoline-fueled heavy-duty vehicles will require catalysts and unleaded gasoline beginning in 1984 due to stringent standards for the emissions of hydrocarbons and carbon monoxide (see 45 FR 4136, January 21, 1980)). Heavy-duty diesel vehicles, if left uncontrolled, would emit 218,000-266,500 metric tons per year of particulate matter to the atmosphere by 1995. Urban areas would be the most seriously affected by these emissions. Ambient particulate levels from heavy-duty diesels alone would reach 2 to 7 micrograms per cubic meter (annual geometric mean) in cities such as Chicago, Los Angeles, New York, and Dallas. Somewhat smaller levels of 2 to 5 micrograms per cubic meter (annual geometric mean) would occur in smaller cities such as St. Louis, Denver, and Phoenix. These levels would occur over large-scale areas within these cities. Additional diesel particulate levels of 5 to 6 micrograms per cubic meter (annual geometric mean) would be expected in localized areas within 90 meters of very busy roadways. If controls are not applied, these ambient impacts would hinder the efforts of many urban air quality control regions to meet the primary NAAQS for TSP of 75 micrograms per cubic meter. EPA set this NAAQS at a level to protect the public health; many areas of the country are currently exceeding the standard.

Diesel particulate is a particular health concern because of its chemical nature. Diesel particulate contains polycyclic organic matter, which is believed to be carcinogenic, and carbon, which can synergistically increase the effects of other pollutants. The extractable organic fraction of diesel particulate has been shown to be mutagenic (causing genetic damage) in short-term bioassays. EPA is currently performing a health assessment to determine the carcinogenic risk (if any) to human health.

Diesel particulate is also extremely small in size, allowing it to penetrate deeply into the lungs. Over 95 percent of diesel particulate is fine (aerodynamic diameter of less than 2.5 micrometers). Fine particles, such as these, have the greatest potential health impact as they have the longest contact with the most sensitive areas of the respiratory tract. Particulate emitted from diesels also has a greater relative exposure impact than

that from many stationary sources because it is emitted at ground level in areas where people live and work.

Alternatives Under Consideration

EPA will consider the following alternatives when proposing a standard for particulate emissions from heavy-duty diesel vehicle engines:

(A) Do not regulate particulate emissions from heavy-duty diesel vehicles, but apply additional controls to particulate emissions from stationary sources. Control of particulate emissions from stationary sources may be less costly than controlling particulate emissions from heavy-duty diesel vehicles. But these stationary source controls may not be able to provide the necessary improvements in air quality which are available from the control of heavy-duty diesel vehicles.

(B) Do not regulate particulate emissions from heavy-duty diesel vehicles, but apply more stringent controls to particulate emissions from other classes of motor vehicles. Controls placed on these other vehicle classes, however, do not at this time appear to be as cost effective as heavy-duty diesel controls. Also, controls placed on these other vehicle classes may not be able to provide the same improvement in air quality as the regulation of emissions from heavy-duty diesels.

(C) Prescribe a heavy-duty diesel particulate standard and examine alternative levels of control along with alternative dates of implementation. It is likely that the different alternatives examined will have different costs and effectiveness and one may prove to be significantly better than the others, while still complying with Congressional mandates.

We currently regard alternative (C) as the most desirable alternative. Additional particulate controls available for stationary sources and other mobile sources do not appear able to reduce particulate emissions enough to remove the need for regulation of particulate emissions from heavy-duty diesel engines.

Summary of Benefits

Sectors Affected: The general public, particularly those living in urban areas or near busy roadways, and those who are especially susceptible to respiratory disease; and States containing areas currently in violation of the National Ambient Air Quality Standard (NAAQS) for total suspended particulate matter (TSP).

EPA estimates that this regulation will reduce particulate emissions from heavy-duty diesel vehicles by 50 to 75 percent. This reduction would begin to

appear with those new vehicles produced in the 1985 model year. By 1995, emissions of particulate matter from these vehicles would be reduced from 218,000–266,500 metric tons per year (depending on the number of diesels on the road) to 78,000–95,000 metric tons per year. Urban levels of heavy-duty diesel particulate in the atmosphere would be reduced from 2–7 micrograms per cubic meter to 1–3 micrograms per cubic meter. Roadside levels would be reduced similarly. These reductions will help many areas of the country meet the primary NAAQS for TSP (75 micrograms per cubic meter) which EPA set at a level to protect the public health. Because diesel particulate is highly respirable, these reductions should provide an added benefit in the area of public health.

Also, because diesel particulate is very small (average diameter of 0.07 to 0.2 micrometer) and is primarily made up of carbon, it is very effective in reducing visibility. Thus, any reduction in diesel-particulate concentration should improve visibility, particularly in urban areas.

Summary of Costs

Sectors Affected: Manufacturers of heavy-duty diesel engines and vehicles; and purchasers and users of heavy-duty diesel vehicles.

This regulation probably will require the addition of emission control devices to heavy-duty diesel engines, though the actual devices used and their cost could vary from manufacturer to manufacturer and engine to engine. Manufacturers of these engines and of the vehicles equipped with these engines will have to raise prices to recover their increased investment. While this increase could be substantial, roughly a one-time purchase price increase of \$500–\$650 (1980 dollars), EPA does not expect this to adversely affect sales. This increase only represents a 1 to 3 percent increase in the price of a heavy-duty diesel vehicle.

EPA does not expect this regulation to increase the operating costs of heavy-duty diesel vehicles; in fact, a decrease may actually be possible. Because operating costs comprise 90 to 95 percent of the total cost of owning and operating heavy-duty diesel vehicles, this regulation should have a negligible impact (less than 0.5 percent) on the cost of hauling freight in these vehicles. Thus, neither those whose business is hauling freight nor those who have their freight hauled should be adversely affected. Small, independent haulers should experience no disproportionate effect.

The regulation could have an annual effect on the economy of \$100 million or more.

Related Regulations and Actions

Internal: "Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines: Certification and Test Procedures," 40 CFR Part 86.

EPA is also in the process of revising the standard for the emissions of nitrogen oxides from both gasoline-fueled and diesel heavy-duty engines.

External: None.

Active Government Collaboration

None.

Timetable

NPRM—November 30, 1980.

Regulatory Analysis—November 30, 1980.

Current Status—Under preparation.

Public Hearings—30 days after publication of NPRM, Ann Arbor, Michigan.

Public Comment Period—60 days following publication of NPRM.

Comments may be sent to:
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Final Rule—May 1, 1981.

Final Rule Effective—The 1985 Model Year.

Available Documents

ANPRM—42 FR 61287, December 2, 1977, EPA docket A-80-18.

All documents available for review at the EPA, Central Docket Section A-130, West Tower Lobby, Gallery 1, Attn: Docket No. A-80-18, 401 M Street, S.W., Washington, DC 20460. The documents are available for personal inspection Monday through Friday between 8:00 a.m. and 4:00 p.m., or copies can be obtained by personal or written request. A reasonable fee may be charged for copying.

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EPA—Office of Water and Waste Management

Effluent Limitations Guidelines and Pretreatment Standards, and New Source Standards Controlling the Discharge of Pollutants From Pulp, Paper, and Paperboard Mills Into Navigable Waterways (40 CFR Parts 430* and 431*)

Legal Authority

The Clean Water Act, §§ 301, 304, 306, 307, 308, and 501; 33 U.S.C. §§ 1311, 1314, 1316, 1317, 1318, and 1361.

Reason for Including This Entry

The Environmental Protection Agency (EPA) thinks that this rule is important because it will have an annual effect of \$100 million or more on the economy.

Statement of Problem

The Clean Water Act requires the Environmental Protection Agency (EPA) to develop technology-based effluent limitations guidelines and standards for discharges of pollutants into navigable waterways and the introduction of pollutants into publicly owned treatment works (POTWs), and to review such guidelines and standards at least every 5 years. EPA promulgated effluent limitations guidelines reflecting the best practicable control technology currently available (BPT) and the best available technology economically achievable (BAT) and new source performance standards (NSPS) for six subcategories of the industry on May 9 and 29, 1974 (39 FR 16578, 40 CFR Part 431; and 39 FR 1872, 40 CFR 430). EPA promulgated BPT guidelines for the 16 remaining subcategories of the industry on January 6, 1977 (42 FR 1398, 40 CFR Part 430).

The Clean Water Act of 1977 requires industry to achieve by July 1, 1984 effluent limitations requiring application of BAT for those pollutants which Congress declared "toxic" under § 307(a) of the Act. In addition to the emphasis on toxic pollutants reflected by BAT, the Act requires industry to achieve by July 1, 1984 "effluent limitations requiring the application of the best conventional pollutant control technology" (BCT) for the regulation of conventional water pollutants (biochemical oxygen demand, suspended solids, fecal coliform, oil and grease, and pH). All pollutants that are not either toxic or conventional have been termed "non-conventional" and are subject to regulation under BAT.

EPA expects to publish proposed effluent limitations guidelines for BAT, BCT, and NSPS, and pretreatment standards for existing and new sources (PSES, PSNS) for the pulp, paper, and

paperboard and the builders' paper and board mills point source categories in the Federal Register, in November 1980.

EPA estimates that there are 706 operating pulp, paper, and paperboard mills in the United States which discharge about 4.2 billions gallons per day of wastewater. Toxic and non-conventional pollutants of concern detected in the industry's wastewaters during an EPA sampling program were 2,4,5-trichlorophenol, 2,4,6-trichlorophenol, pentachlorophenol, chloroform, ammonia, and zinc. Chloroform, pentachlorophenol, trichlorophenolic ammonia, and zinc can be toxic to aquatic organisms. Chloroform and trichlorophenol are known carcinogens. Conventional pollutants routinely monitored in discharges from pulp, paper, and paperboard mills include biochemical oxygen demand, suspended solids, and pH. Excessive discharge of conventional pollutants may cause a depletion of the dissolved oxygen in streams, which can result in fish kills.

Alternatives Under Consideration

The Agency is considering various wastewater treatment technologies for controlling toxic, non-conventional, and conventional pollutant discharges from the pulp, paper, and paperboard industry to the Nation's waterways. We will regulate toxic and non-conventional pollutants under the best available technology economically achievable (BAT), new source performance standards (PSNS), pretreatment standards for existing sources (PSES), and pretreatment standards for new sources (PSNS). We will regulate conventional pollutants under the best conventional pollutant control technology (BCT) and new source performance standards (NSPS).

In evaluating the options for development of regulations, the Agency considers several important factors, including the quantity and type of pollutants each wastewater source discharges, treatment technologies that are available for the control of these wastewaters, the air pollution and solid wastes that the wastewater treatment systems may produce, and the cost of these systems.

The Agency, through its sampling and data gathering efforts, has determined that existing biological treatment systems are very effective in removing most toxic pollutants found in pulp, paper, and paperboard industry wastewaters. Several toxic pollutants were detected with sufficient frequency and/or at sufficient levels to concern us and we are considering them as candidates for control under BAT and

pretreatment regulations. The pollutants of concern and the options being considered to ensure their control under BAT are described below.

Pentachlorophenol, 2,4,5-trichlorophenol, and 2,4,6-trichlorophenol (toxic pollutants) are present in treated effluents in many subcategories of the industry. These compounds are present in certain of the slimicide and fungicide formulations used in the pulp, paper, and paperboard industry. The best and least expensive method for control of these pollutants is the substitution of these slimicides and fungicides with formulations that do not contain pentachlorophenol, 2,4,5-trichlorophenol, or 2,4,6-trichlorophenol.

Chloroform (a toxic pollutant) is present in very high concentrations (up to 10 milligrams per liter) in raw wastewaters from mills producing bleached pulps. Biological treatment systems are capable of removal of chloroform to low levels (less than 0.1 milligrams per liter). The Agency is considering establishing BAT effluent limitations guidelines and NSPS based on those levels of chloroform attained through the application of biological treatment.

Zinc (a toxic pollutant) is present in wastewaters from facilities using zinc hydrosulfite as a bleaching chemical. The Agency is considering establishing BAT effluent limitations guidelines, NSPS, and pretreatment standards based on the substitution of zinc hydrosulfite with sodium hydrosulfite.

Ammonia (a non-conventional pollutant) is discharged from facilities using ammonia-based pulping processes. The Agency is considering establishing BAT effluent limitations and NSPS based on either a substitution to a different chemical base or on the application of additional end-of-pipe treatment.

Conventional pollutants currently regulated include: biochemical oxygen demand (BOD), total suspended solids (TSS), and pH. The Agency is considering three alternatives under BCT to reduce the discharge of BOD and TSS from pulp, paper, and paperboard mills:

Alternative (A) includes the addition of in-plant production process controls to reduce raw wastewater flow and BOD to the existing BPT treatment system.

Alternative (B) includes the reduction of BOD and TSS to levels typical of best performing mills. This option may require expansion or upgrading of existing end-of-pipe treatment systems at many mills in the pulp, paper, and paperboard industry.

Alternative (C) includes the application of chemically assisted clarification in addition to the technology considered as the basis of Alternative (A).

The Agency is still developing information on the costs and capabilities of the three technology options.

Summary of Benefits

Sectors Affected: The general public.

The major benefit of the proposed rule will be the reduction or elimination of toxic, non-conventional, and conventional pollutant discharges from pulp, paper, and paperboard mills. The discharge of 2,4,5-trichlorophenol, 2,4,6-trichlorophenol, pentachlorophenol, and zinc would be virtually eliminated and the discharge of chloroform and ammonia would be greatly reduced.

The discharges of BOD and TSS from pulp, paper, and paperboard mills will be substantially reduced by the following amounts dependent upon the option selected as the basis of BCT regulations:

BOD: Alternative (A)—18 percent, Alternative (B)—40 percent, Alternative (C)—50 percent.

TSS: Alternative (A)—18 percent, Alternative (B)—45 percent, Alternative (C)—80 percent.

The current discharge of one million pounds per day of BOD from pulp, paper, and paperboard mills accounts for about 45 percent of the total industrial contribution of BOD. Therefore, these additional reductions represent a significant portion of current conventional pollutant discharge to the Nation's waterways.

Summary of Costs

Sectors Affected: Pulp, paper, and paperboard mills; and users of pulp, paper, and paperboard products.

The Agency is currently refining cost data for the various technology options. We expect that, with the exception of ammonia removal options, the BAT, PSES, and PSNS technology options will have an insignificant impact on the pulp, paper, and paperboard industry. It is likely that large capital expenditures will be necessary at the nine pulp mills using ammonia-based cooking liquors, should we establish limitations for the control of ammonia.

The Agency has made preliminary estimates of the capital costs (1978 dollars) for all U.S. pulp, paper, and paperboard mills to attain levels of BOD and TSS associated with the BCT technology alternatives. They are: Alternative (A)—\$.83 billion, Alternative (B)—\$1.2 to 1.9 billion, and Alternative (C)—\$2.2 billion.

These costs may result in price increases ranging from zero to 11.5 percent.

These regulations should not require additional resources of EPA or State permit authorities.

Related Regulations and Actions

Internal: Requirements for the management of solid wastes under the Resource Conservation and Recovery Act may affect the cost of installation and operation of various wastewater treatment technologies.

External: None.

Active Government Collaboration

The Department of Commerce has provided assistance by reviewing materials.

Timetable

NPRM—November 1980.

Public Comment Period—60 days following publication of NPRM.

Final Rule—June 1981.

Regulatory Analysis—November 1980.

Available Documents

Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Unbleached Kraft and Semichemical Pulp Segment of the Pulp, Paper, and Paperboard Mills Point Source Category, EPA, May 1974, National Technical Information Service (NTIS) Number PB-238833.

Development Document for Effluent Limitations Guidelines (BPCTCA) for the Bleached Kraft, Groundwood, Sulfite, Soda, Deink, and Non-integrated Paper Mills Segment of the Pulp, Paper, and Paperboard Point Source Category, EPA December 1976 (available for review at EPA Headquarters Library, 401 M St., S.W., Washington, DC 20460).

Preliminary Data Base for Review of BATEA Effluent Limitations Guidelines, NSPS, and Pretreatment Standards for the Pulp, Paper, and Paperboard Point Source Category, prepared for the U.S. Environmental Protection Agency by the Edward C. Jordan Co., Inc., Portland, Maine, June 1979 (Available for review at EPA Headquarters and Regional Libraries only).

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EPA—OWWM

Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Iron and Steel Manufacturing Plants to Navigable Waterways and the Pretreatment of Wastewaters Introduced into Publicly Owned Treatment Works (40 CFR Part 420*)

Legal Authority

The Clean Water Act as amended, §§ 301, 304, 306, 307, and 501; 33 U.S.C. §§ 1311, 1314, 1316, 1317, and 1351.

Reason for Including This Entry

The Environmental Protection Agency (EPA) believes this regulation is important because it will provide control of discharges into the water from the largest metal manufacturing industry in the United States. We expect it will have annual effect on the economy of more than \$100 million.

Statement of Problem

The Clean Water Act requires the Environmental Protection Agency (EPA) to promulgate regulations to control the discharge of pollutants into navigable waters and the introduction of pollutants into publicly owned treatment works (POTWs). These regulations must include effluent limitations representing the best practicable technology (BPT), the best conventional technology (BCT), the best available technology (BAT), new source performance standards (NSPS), and pretreatment standards for facilities introducing wastewaters into POTWs.

The Clean Water Act of 1977 requires industry to achieve, by July 1, 1984, effluent limitations requiring application of BAT for those pollutants which Congress declared "toxic" under 307(a) of the Act. In addition to the emphasis on toxic pollutants reflected by BAT, the Act requires industry to achieve, by July 1, 1984, "effluent limitations requiring the application of the best conventional pollutant control technology" (BCT) for the regulation of conventional water pollutants (biochemical oxygen demand, suspended solids, fecal coliform, oil and grease, and pH). All pollutants that are not either toxic or conventional have been termed "non-conventional" and are subject to regulation under BAT.

Initially, we promulgated regulations for the iron and steel manufacturing industry on June 28, 1974 (Phase I or steelmaking operations), and on March 29, 1976 (Phase II or forming, finishing, and specialty steel segments). The U.S. Court of Appeals for the Third Circuit remanded the regulations for several reasons, including the Agency's failure

to consider adequately (1) the impact of plant age on the cost or feasibility of retrofitting, (2) site-specific costs, (3) consumptive water use, (4) the economic condition of the industry, and (5) the achievability of certain limitations. (*AISI et al. v. EPA*) 526 F.2d 1027 (3d Cir. 1975) and *AISI et al. v. EPA* 568 F.2d 284 (3d Cir. 1977).

We are developing a new BPT regulation to replace the regulations remanded by the court. This regulation will reflect new information from industry surveys and sampling and will remedy the deficiencies found by the court. In addition, we are developing BCT and BAT regulations to control conventional and toxic pollutants, as required by the 1977 amendments to the Clean Water Act. We expect to publish an NPRM in the *Federal Register* in December 1980 which will include effluent limitations and standards for the manufacturing operations covered by the 1974 and 1976 regulations.

The iron and steel manufacturing category (Standard Industrial Classification Codes 3312, 3315, 3316, 3317, and parts of 3313 and 3479) is comprised of approximately 650 manufacturing facilities nationwide. The amount of process water used by these facilities is estimated to be 6,272 million gallons per day. Because of these large flows, the quantity of pollutants discharged is very large, even though the concentration of pollutants in a waste stream sometimes may be relatively small. The October 1979 Draft Development Document presented the concentration and load data available at that time.

During its sampling program, EPA detected, in iron and steel manufacturing wastewaters, significant levels of copper, chromium, cyanide, iron, nickel, lead, zinc, oil and grease, ammonia, sulfide, fluoride, and suspended solids. Additionally, the Agency found a wide variety of organic materials including benzene, phenols, and aromatic compounds in wastewaters from coke manufacturing, from blast furnaces which use the coke, and in cold rolling operations. The heavy metals may produce cumulative toxic effects and many of the organic compounds are known or suspected carcinogens. Ammonia, a "non-conventional" pollutant, is proposed for control because of its high aquatic environment impact at the high concentrations present in wastes from some operations in this industry.

Alternatives Under Consideration

The Agency is evaluating the capabilities and costs of various wastewater treatment technologies for

controlling pollutant discharges from iron and steel manufacturing facilities. A primary focus of this effort is to promulgate regulations to control the discharge, and to prevent "pass through" etc., of toxic pollutants.

The technologies for the control of wastewater pollutants include both end-of-pipe treatment and methods to reduce water usage. End-of-pipe treatment, best applied after recycle to reduce wastewater volumes, includes, where appropriate, cyanide oxidation, hexavalent chromium reduction, metals precipitation, oil removal, suspended solids (including precipitated metals) removal, and chemical and biological destruction of ammonia and toxic organic materials. The applicability of these technologies is dependent on the type of waste generated by the subcategory or segment; i.e., not all of the listed technologies are applicable to all sources. However, within each subcategory or segment, the appropriate technologies in the alternatives outlined below are generally applicable to all iron and steel manufacturing facilities within that segment.

Alternative (A) includes in-process controls to reduce water flows, metals precipitation (if not already required by BPT), and filtration. This option also includes extended biological treatment of coke plant wastes. This alternative achieves approximately a 90 percent reduction in the BPT effluent loads.

Alternative (B) includes sulfide precipitation of metals prior to filtration. Coke plants would add powdered activated carbon (PAC) to the extended biological treatment system. This alternative further reduces toxic metal discharges at modest additional cost. The PAC treatment assures reduced discharges of toxic organic compounds, but would require significant additional costs.

Alternative (C) includes advanced treatments such as evaporation to achieve zero discharge, and chemical oxidation of sinter plant and blast furnace wastewaters to reduce discharges of ammonia and organic pollutants. Evaporative treatments generally provide the maximum protection of the environment but at considerable cost in most cases. Chemical oxidation of sinter and blast furnace process water provides control of the large loads of toxic organic and "non-conventional" pollutants that would otherwise be discharged.

In evaluating options for this regulation now under development, we considered all of the important factors, including the quantity and type of pollutants generated by each wastewater source; the treatment

technologies available for application to that wastewater source; air, solid waste, energy, and other non-water quality environmental aspects of the proposed regulation; and the cost and economic impact of applying each of the several options.

We are still gathering additional information on costs and on the availability and effectiveness of technologies. We have not at this time selected the alternatives we will propose, although we think that alternatives which reduce the discharge of water to the maximum extent are the most environmentally acceptable.

Summary of Benefits

Sectors Affected: The general public.

The major benefit of the regulation we will propose will be the reduction of toxic pollutant discharges from iron and steel manufacturing facilities. The quantity of pollutants removed from discharges to the environment under this regulation will vary depending on the various options selected. The Agency estimates that through compliance with the BPT regulation the industry will remove approximately 3.4 million pounds per year of toxic organics, 5.8 million pounds per year of toxic metals, and 176 million pounds per year of suspended solids, oil and grease, ammonia, and other pollutants. Alternatives (A), (B), or (C) will reduce BPT process wastewater volumes from about 2,600 million gallons per day (mgd) to about 300 mgd. Alternative (A) will reduce BPT pollutant discharge loads by about 85 percent to 90 percent. Alternatives (B) and (C) will provide additional, but less dramatic, removals of pollutants. BCT limitations will be achieved by the BPT or BAT systems; i.e. no additional costs will be incurred specifically to achieve BCT limitations.

Summary of Costs

Sectors Affected: Manufacturing of iron and steel products; and users of these products.

We are continuing to refine the cost data for BPT remaining to be installed and for the various BAT options. We are also evaluating the cost effectiveness of the different BAT levels of treatment for the various operations. As an approximation of the cost of compliance, the capital investment (in millions of 1978 dollars) for the BPT remaining to be installed and the BAT regulatory options likely to be selected are as follows:

BPT.....	417.8
BAT.....	444.1
NSPS.....	159.5
Total.....	1021.4

These costs exclude Consent Decree commitments and anticipated shutdowns through July 1, 1984.

Under the current and projected 1981 to 1990 economic environments, it is doubtful that the industry will be able to raise all of the funds necessary to finance the capital requirements of this regulation plus the capital necessary to maintain production facilities and still maintain high enough bond ratings to ensure ready access to debt capital markets. The industry will face excess capacity as it attempts to recover from the current recession and will face continued competition from foreign steel. Throughout the 1980s both these factors will probably prevent the industry from raising prices to levels that would enable them to recover the annual costs associated with this regulation. Consequently, we project that this regulation will probably contribute somewhat to (1) a gradual decline in productive capacity, (2) a gradual loss in the industry's share of the domestic steel market, and (3) a gradual decline in steel industry employment. However, we also project that major changes in U.S. industrial policy towards industry in general, and the steel industry in particular, could enable the industry to finance all its projected productive capital requirements as well as this regulation without serious adverse economic effects. Such policy changes might include major tax reform, a return to "fair value" steel import prices, and full latitude for the industry to increase prices in accordance with market conditions.

Although our projected baseline economic impact is pessimistic, this regulation is only a proposal at this time. Further analysis of the economic impact will be completed before the regulation is promulgated.

Related Regulations and Actions

Internal: The Agency is reviewing the interaction between this regulation and air pollution and solid waste disposal requirements. As an example, we are evaluating the possible disposal of blowdown from blast furnace wastewater recycle systems by evaporation in slag pits. We are coordinating this with the Office of Research and Development and with air programs.

In addition, in evaluating wastewater treatment alternatives, the Agency is considering, to the extent possible, the requirements and costs for the management of solid wastes under the Resource Conservation and Recovery Act.

External: This regulation will set minimum requirements on a national level which supersede less stringent State or local regulations. However, all levels of government may require more stringent limitations in specific instances if water quality criteria or other requirements so justify.

Active Government Collaboration

None.

Timetable

NPRM—December 1980.
Regulatory Analysis—February 1981.
Public Comments & Hearing—
February 1981.
Final Rule—July 1981.

Available Documents

The applicable documents currently available are:

Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Steelmaking Segment of the Iron and Steel Manufacturing Point Source Category, June 1974; EPA-440/1-74-024-a.

Development Document for Proposed Effluent Limitations Guidelines and Standards for the Iron and Steel Manufacturing Point Source Category, Volumes 1 through 9, October 1979; EPA 440/1-79/024-a.

Copies of the June 1974 report are available from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161. The accession number is PB 238-837 and the cost is \$24.80 per copy. The October 1979 report may be obtained through the EPA contact designated below.

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EPA—OWWM

Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants From Steam Electric Power Plants (40 CFR Part 423*)

Legal Authority

The Clean Water Act, §§ 301, 304, 305, 306, 307, 311, 402, and 504, 33 U.S.C. §§ 1311, 1314, 1316, 1317, 1318, 1321, 1364, 1346.

Reason for Including This Entry

The Environmental Protection Agency is including this entry because of the

high public interest in these regulations and because they may have an annual effect on the economy of \$100 million or more.

Statement of Problem

The Environmental Protection Agency (EPA), in its efforts to control water pollution under the Clean Water Act, is required to develop technology-based effluent limitations guidelines and standards to control pollutant discharges from the steam electric power generating industry, and review these regulations once every 5 years. We initially promulgated effluent limitations guidelines for this industry on October 8, 1974 that reflected the best practicable control technology currently available (BPT), the best available technology economically achievable (BAT), new source performance standards (NSPS), and pretreatment standards for new sources (PSNS). The U.S. Court of Appeals for the Fourth Circuit remanded parts of the guidelines (*Appalachian Power v. Train*, 545 F. 2d 1351 (4th Cir. 1976)). The court found the record insufficient with respect to various technical aspects and non-water quality considerations (especially cost data and ultimate disposal of wastes).

We have reviewed the 1974 regulations to reflect updated information and remedy the deficiencies pointed out by the Fourth Circuit Court of Appeals. In addition to the pollutants examined in the previous regulations, we expanded the review to include toxic substances cited in the June 8, 1976 Consent Decree, *Natural Resources Defense Council et al. v. Train*, 8 ERC 2120 (D.D.C. 1976). The NPRM was published in the *Federal Register* on October 14, 1980. We did not include guidelines for thermal discharges in these regulations. The Agency is still considering various thermal options in light of *Appalachian*.

The steam electric generating industry is composed of approximately 850 generating plants nationwide. These plants have extremely large discharge flows, therefore the quantity of pollutants they discharge may be substantial even though the concentration is relatively low. The average discharge flow from a steam electric power plant is 210 million gallons per day. Discharges from the Steam Electric power industry constitute about 15 percent of the total flow in the United States rivers and streams. Pollutants detected in the wastewaters of steam electric plants during an EPA sampling program were total residual chlorine, copper, zinc, nickel, chromium, arsenic, and trihalomethanes.

Alternatives Under Consideration

The Agency considered several wastewater treatment technologies for controlling pollutant discharges from steam electric plants to the Nation's waterways. The primary focus of this effort was to assess the potential control of discharges of toxic substances. In this review of effluent regulations, we focused our efforts on cooling water and ash transport water as the major wastestreams because of their large flows. Over 95 percent of the volume of water used in an average power plant is used as cooling water.

Cooling Water—All steam electric power plants circulate large volumes of water through their condensers in order to condense steam in the turbines. The thermal efficiency of the steam cycle can be greatly reduced if biological growth occurs in the condensers. Plants using chlorine to control biological growth have the potential to discharge total residual chlorine (TRC) and chlorinated compounds into the navigable waters. TRC is a pollutant that has been studied extensively and is known to adversely affect aquatic life.

For regulatory purposes, the Agency separated those power plants with a recirculating cooling tower and those discharging the cooling water without recirculation. The waste streams produced as a result of these operations are cooling tower blowdown and once-through cooling water discharges.

In addition to TRC discharges, plants with cooling towers have the potential to discharge toxic pollutants through chemicals added for cooling tower maintenance.

The technologies that the Agency evaluated for control of pollutants from cooling water included 1) chlorine minimization, 2) dechlorination, 3) alternative chemicals, and 4) mechanical antifouling devices.

Chlorine minimization is a program designed to insure the most efficient use of chlorine and reduce the amount of TRC discharged. Plant personnel conduct a series of tests to determine the minimum amount of chlorine necessary to control biological growth in the condensers. Many plants undergoing such a program find that chlorine doses can be reduced significantly. Chlorine minimization programs are difficult to conduct at plants with cooling towers since chlorine may also be used for cooling tower maintenance.

Dechlorination is chemical treatment that removes a significant amount of TRC from the cooling water discharge. Although dechlorination reduces the amount of TRC, it does not eliminate it.

Alternatives to chlorine were explored for use in both cooling tower blowdown and once-through cooling water discharges. While adequate substitutes for chlorine were found, they were not viable in all cases, and could not be applied on a national basis. Alternative chemicals were also evaluated for use in cooling towers because other chemicals (besides chlorine) are commonly added to prevent scaling and corrosion in the cooling tower. Many of these chemicals contain priority pollutants. For example, high levels of chromium and zinc are present in cooling tower blowdown only if they were added for cooling tower maintenance. Alternatives to these chemicals were found to be available.

Some plants use mechanical antifouling devices to control biological growth in the condensers. Two types of methods are used. One uses sponge rubber balls that are forced through the tubes under water pressure and then recycled. The second method uses brushes that are installed on the inside of each tube. Although this method eliminates chlorine use, it is expensive to install on existing sources. Furthermore, mechanical antifouling devices are not always adequate substitutes for chlorine.

For plants with once-through cooling water, the Agency has chosen to combine a chlorine minimization program with a maximum limit for TRC of .14 milligrams per liter (mg/l) and dechlorination, if that limit can not be met through minimization only. In this way the Agency assures proper use of chlorine, as well as limiting the addition of dechlorination chemicals.

For plants with cooling towers, the Agency did not require chlorine minimization technique, because it would be unduly complex for this waste stream since chlorine may also be used for cooling tower maintenance. The proposed regulations instead limit the discharge of TRC to .14 mg/l based on dechlorination technology. For control of toxic pollutants discharged from cooling towers, the Agency has chosen alternative chemicals as the best technology to eliminate toxic pollutant discharges. These alternative chemicals effectively and economically protect cooling towers from scaling, corrosion, and biological growth.

Ash Transport Water—For ash transport water (defined below), the Agency was concerned about the presence of inorganic toxic substances. However, the data on fly ash ponds did not demonstrate a consistent pattern of pollutant concentration, and were considered to be statistically inconclusive. Pollutant concentrations in

bottom ash transport water were typically lower than those in fly ash transport water.

These pollutants can enter the water because coal or oil that is burned in a steam electric plant's boiler produces varying amounts of ash that require periodic collection and disposal. The relatively fine and light-weight ash is carried from the boiler with the flue gases and collected with air pollution control equipment. This type of ash is called "fly ash." The relatively bulky and heavy ash that settles at the bottom of the boiler's furnace is called "bottom ash." These two types of ash can be transported wet or dry to their ultimate or temporary disposal sites. (Only those plants that transport their ash using water would be affected by effluent regulations.)

The Agency did not propose any further controls for existing sources of fly ash transport water beyond the current regulation. EPA seriously considered proposing no discharge of fly ash transport water but EPA concluded that the extremely high costs to the industry (\$3.2 billion in capital costs for 1980-1985) could not be justified in view of the inconclusive nature of the available data regarding the degree of pollutant reduction. The technology base for achieving this option was the use of transport methods that do not require the use of water (dry transport). EPA did not feel that it would be responsible to impose such costly additional requirements in the face of such uncertainty. The Agency is considering further sampling to clarify wastewater characteristics of ash pond discharges. However, the Agency is proposing to prohibit the discharge of fly ash water for all new plants. This is because the technology is clearly demonstrated and available, since about half of the industry already uses dry methods of transport. Moreover, the costs for installing a dry fly ash handling system are not appreciably different than costs to install a wet ash sluicing system in a new plant. We do not anticipate any new sources to discharge their fly ash water to a publicly owned sewage treatment plant.

Bottom Ash—The need to control pollutant discharges from bottom ash transport water was not demonstrated based on the sampling data, since at most plants sampled, the concentrations of pollutants detected in the bottom ash pond were less than the concentrations detected in the plant's inlet water. In addition, the concentrations of these pollutants were not only lower than those detected in fly ash ponds, but also exhibited a greater variability. Thus, we

have proposed to withdraw the current BAT requirement for partial recycle of bottom ash sluice water, since the sampling data suggests that adequate controls are already imposed by the effective BPT technology of settling ponds.

Summary of Benefits

Sectors Affected: The general public; manufacturing of antipollution equipment; and the aquatic environment.

The major benefit of the proposed rule is the improvement of the aquatic environment through the reduction and/or elimination of discharges from steam electric generating facilities. The review found that the chlorine controls were not sufficiently stringent. In addition, toxic pollutant additives were virtually banned from use in cooling towers. Preliminary estimates indicate that the proposed regulations will result in the following reduction or elimination of pollutants by waste stream types:

1. Once Through Cooling Water: 17.4 million pounds per year of total residual chlorine.

2. Cooling Tower Blowdown: a. 30,000 pounds per year of total residual chlorine.

b. 157,000 pounds per year of toxic pollutants (chromium, zinc, chlorinated phenolics, etc.).

Manufacturers of anti-pollution equipment would find increased demand for their products.

Summary of Costs

Sectors Affected: Establishments engaged in the generation, transmission and/or distribution of electric energy for sale (electric services); and users of the electric energy.

On a national basis an estimate of the total capital expenditures required to bring existing plants into compliance with the proposed regulations for the period 1980-1985 equals \$120 million (1980 dollars). This represents about 0.05 percent of the total anticipated capital expenditures for the industry during the same period. With the addition of operation and maintenance costs, this means that the average electric bill for consumers would increase by approximately 0.04 percent. The estimated capital expenditures for plants coming on line between 1985 to 1995 are \$80 million. None of these requirements is expected to cause plant closings; furthermore, the economic impact is minimal.

Related Regulations and Actions

Internal: The scrubber systems used to comply with air pollution regulations

may discharge contaminated water. The proposed requirements of the New Source Performance Standards under § 111 of the Clean Air Act will increase the number of facilities with scrubber systems in the future.

Section 316(b) of the Clean Water Act authorizes the Agency to require the best available technology in the location, design, construction, and capacity of intake structures for cooling water, to minimize adverse environmental impact.

Requirements for the management of solid wastes under the Resource Conservation and Recovery Act may affect the economic and environmental factors associated with various wastewater treatment technologies.

External: The recent emphasis on converting oil-fired power plants to other fuel types and the problems associated with nuclear waste disposal will affect the distribution of generating capacity by fuel types in the industry and, therefore, the amount of pollutants that would be discharged and controlled.

Active Government Collaboration

The Nuclear Regulatory Commission, the Department of Interior, and the Department of Energy have provided assistance by supplying the Agency with information and/or reviewing materials.

Timetable

Public Comment Period—60 days following publication of NPRM.
Final Rule—April 1981.

Available Documents

Development Document for Proposed Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Steam Electric Power Generating Point Source Category (EPA 440/1-80/029-b, September 1980).

NPRM—45 FR 68327, October 14, 1980.
Regulatory Analysis—October 1980.

Economic Analysis of Proposed Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Steam Electric Power Generating Point Source Category (EPA, August 1980).

Copies of the above reports can be obtained from NTIS or the EPA contact designated below.

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EPA—OWWM

Water Quality Standards Regulations (40 CFR Part 35.1550*)

Legal Authority

The Clean Water Act, 33 U.S.C. § 1314(a).

Reason for Including This Entry

This regulation proposes significant new policies and procedures in the development and implementation of water quality standards.

Statement of Problem

The existing Water Quality Standards Regulation (40 CFR Part 35.1550) does not provide the guidance needed by States to develop and implement an effective State program which will meet the water quality goals set forth in the Clean Water Act. Guidance is lacking in the areas of defining what stream uses are attainable and how standards may be adapted to specific local environmental conditions. This proposed regulation seeks to establish a clearer, more flexible process for States and EPA to use in formulating water quality standards; conducting water quality analyses; establishing wasteload allocations to distribute the total daily load of pollutants that a stream segment can assimilate and maintain to achieve standards; and implementing a control program regulating point source discharges through issuance of permits (either by the States or EPA) based on State water quality standards. In some cases, application of previous policies and regulatory provisions have resulted in setting unreasonably high standards, forcing the imposition of costly treatment controls with little environmental improvement.

The water quality standards program will continue to consist of three components: (1) designation of uses for segments of surface water bodies, such as swimming, aquatic protection, and public water supply; (2) development of criteria, primarily by EPA, designed to achieve and maintain designated uses; and (3) application of uses and criteria by the States to specific streams. The 1972 amendments to the Clean Water Act (CWA) established the 1983 goal of achieving, wherever attainable, aquatic protection and recreation for the Nation's waters, including both fresh and marine waters. Congress recognized that progress toward meeting or reassessing the attainability of this goal would be incremental in that different levels of treatment are required at different times, and treatment beyond

technology-based requirements may, in some cases, be necessary to meet water quality standards. Progress depends on such variables as the effectiveness of municipal and industrial treatment technologies in meeting water quality standards and the economic impact on municipalities and industries of attaining standards. The development and implementation of standards requires periodic review and adjustment of control measures or standards by the States and EPA, as appropriate.

This proposed regulation revises and consolidates the existing regulations governing water quality standards: 40 CFR 35.1550 and 40 CFR 120. No change is envisioned in the Act's direction that States adopt water quality standards, subject to EPA review and approval. EPA is revising these regulations to:

(1) provide more detail on policies and procedures for determining the attainability of uses applied to water bodies or segments thereof;

(2) establish a stronger water quality standards program for control of toxic pollutants; and

(3) improve the public's understanding of the process by providing more specific guidance on the development of State water quality standards and implementation.

Alternatives Under Consideration

EPA gave public notice of its intent to revise this regulation in an ANPRM (43 FR 29588, July 10, 1978). In that notice, EPA identified and requested public comment on a number of possible policy alternatives dealing with the establishment and revision of beneficial stream uses, the adoption of water quality criteria published by EPA, the application of the criteria for toxic pollutants developed by EPA, economic impact considerations, and a number of other program issues.

Since the public responded to the ANPRM, the Agency has prepared drafts of a water quality standards program strategy and a series of option papers based on the public's reaction to the policy alternatives proposed in the ANPRM. These papers dealt with the subjects of use attainability, options for State adoption of criteria for toxic pollutants, program definitions, economic guidance on stream downgradings, and other subjects. These papers have been reviewed by various parties outside the Agency, such as the States, and various industrial and environmental groups.

The proposed regulation is a result of the analyses, discussions, and public comments on the ANPRM and subsequent documents. The regulation

itself is subject to further public comment.

Summary of Benefits

Sectors Affected: The States; and through their regulatory controls based on water quality standards, the general public; publicly owned treatment works; all types of industries discharging into surface waters; and EPA.

Use designation for many stream segments need reappraisal for a number of reasons. States initially established many water quality standards without sufficient site-specific analysis of waterway conditions affecting the attainability of the designated use, and the criteria necessary to support these uses. In addition, States and EPA lacked sufficient information regarding the effectiveness of technology-based controls in implementing these water quality standards. The review of advanced waste treatment projects mandated by the Congressional Appropriations Committee in FY 1980 also uncovered a number of instances where use classifications needed review.

The proposed regulation provides much more detailed guidance on how States may reassess their stream use classifications in order to meet the "where attainable" water quality goal of the Act. It will provide public officials with more adequate information on the environmental, economic, and technological impacts of their actions which they can consider in making their decisions. The overall benefit will be the establishment of environmentally and economically attainable standards and the prevention of setting arbitrarily high standards, forcing unnecessary, costly treatment controls.

Summary of Costs

Sectors Affected: State government.

The net result of the increased flexibility for establishing site-specific, attainable water quality standards will be to reduce the costs to municipalities and industries of meeting water quality-based regulatory controls by assuring that more prudent decisions are made. There may be an increase in State costs to generate and analyze the data necessary to establish attainable uses, but much existing information is available and the analyses will be done either by EPA or the States on a priority basis only where advanced waste treatment decisions are pending, thus lessening the impact on the States. EPA is now attempting to estimate the costs to States. Our belief, however, is that these increased administrative costs

will more than be offset from savings in reducing or eliminating treatment levels not required to meet water quality standards.

Regulated Regulations and Actions

Internal: All regulations designed to achieve water quality standards would be indirectly related, including: National Pollutant Discharge Elimination System, construction grants requirements, and water quality management regulations.

External: All State regulations dealing with water quality regulations.

Active Government Collaboration

The Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) is assisting EPA on this regulation. The U.S. Department of the Interior is also providing assistance.

Timetable

NPRM—December 1980.

Public Hearings—As needed.

Public Comment Period—3-4 months following publication of NPRM.

Final Rule—August 1981.

Regulatory Analysis—To accompany NPRM.

Available Documents

ANPRM—43 FR 29588, July 10, 1978, "Water Quality Standards."

Water Quality Standards Strategy, EPA, September 1980.

Water Quality Use Designation Changes and Justification for Advanced Waste Treatment Installations, EPA, February 7, 1980.

Draft Economic Guidance for Water Quality Standard Downgrading, EPA, April 22, 1980.

Environmental, Technological, and Economic Evaluation of Water Quality Standards Attainability, EPA, April 23, 1980.

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CHAPTER 3—FINANCE AND
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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the
CurrencyAdjustable-Rate Mortgages (Proposed
12 CFR Part 29)

Legal Authority

12 U.S.C. § 1 *et seq.*, 12 U.S.C. § 93a.
Real estate loans—rules and
regulations, 12 U.S.C. § 371(g).

Reason for Including This Entry

The Office of the Comptroller of the
Currency (OCC) includes this entry
because it would set a precedent
concerning the regulation of the terms
on which national banks engage in
certain types of lending activity. It also
concerns a subject of great public
interest—namely, the type of residential
mortgage financing available in the
marketplace.

Statement of Problem

Two trends in particular are making
fixed-rate, long-term lending
unattractive to mortgage lenders,
including commercial banks. The first of
these trends, which has been developing
since the mid-1960s, is the volatility of
short-term market interest rates. Each
successive business cycle has produced
interest rate swings wider than those in
the preceding cycle, and the low point in
each cycle has been steadily rising as
the underlying rate of inflation has
increased.

The second trend is the increasing
sensitivity of banks' cost of deposits and
other borrowed funds to swings in short-
term interest rates. With the
introduction in 1978 of the 6-month
money-market certificates of deposit,
with an interest-rate ceiling linked to the
26-week Treasury bill rate, and ever-
growing portion of banks' liabilities has
become concentrated in short-term
market-rate deposits. This trend is
accelerating because of the gradual
deregulation of deposit interest rate
controls, as mandated by the Depository
Institutions Deregulation and Monetary
Control Act of 1980. As deposit rate

controls are phased out over the next 6
years, interest rates paid by banks on
short-term deposit and on transaction
accounts can be expected to rise to
market levels.

This interest-rate environment has led
many mortgage lenders to seek a means
of passing along changes in their cost of
funds to their long-term borrowers,
including mortgage borrowers. Lenders
frequently have proposed using some
form of adjustable-rate mortgage (ARM)
as a solution. In several States,
however, State regulation has severely
limited this approach. For national
banks located in those States, we favor
preemptive Federal regulations
authorizing the use of ARMs that will
track the interest rates paid by the
banks on their deposit liabilities more
closely than would be allowed under
State law. But in those States, as well as
in the majority of States that impose no
limitations on adjustable-rate lending,
we favor some manner of borrower
protection. Federal regulations should
offer such protection principally in the
form of assuring adequate disclosure
and preventing extraordinary rate
increases.

Alternatives Under Consideration

The Office of the Comptroller of the
Currency has proposed for comment a
regulation that will authorize all
national banks to make adjustable-rate
mortgage loans, provided banks make
adequate disclosure to borrowers
concerning the terms of the loans and
the economic risks they might entail,
and provided also that the banks impose
appropriate limitations on interest-rate
swings. We are also actively considering
two other major alternatives: not issuing
any regulation, i.e., leaving the matter
entirely to the States (or Congress, if it
should choose to act); or authorizing the
use of a single adjustable-rate mortgage
instrument, to the exclusion of all
others, in order to facilitate comparison
shopping by borrowers and to facilitate
the development of a secondary market.
Without prejudging the alternatives, the
OCC currently regards the approach of
issuing a regulation containing a flexible
grant of authority to national banks to
make ARMs on terms they view as
appropriate, subject to certain minimum
borrower safeguards, as preferable to
the two alternatives enumerated above.
Such an approach will give banks the
freedom to design adjustable-rate
mortgage plans that effectively meet
their changing needs and those of their
customers, including both borrowers
and secondary mortgage market
investors.

Summary of Benefits

Sectors Affected: National banking industry; customers and shareholders of national banks; and the general public.

OCC regulation of adjustable-rate mortgage lending by national banks should facilitate bank implementation of efficient product design, i.e., the structuring of loan terms so that the income from ARM's fully covers bank expenses in attracting and maintaining deposit liabilities supporting such loans. That may ultimately expand the volume of mortgage lending, especially in States where existing regulatory schemes are restrictive enough to discourage discretionary mortgage lenders, such as national banks, from engaging in mortgage lending.

Authorization to make ARM's may induce national banks to enter or remain in real estate lending markets even in times of extreme interest rate volatility. That may also be true in States without existing regulatory schemes, since the borrower protections in the regulation could accelerate public acceptance of ARM's. To the extent that increased willingness on the part of national banks to engage in long-term real estate lending will enhance competition in the mortgage lending market, the overall cost to mortgage borrowers may decrease relative to what might have been in the absence of the regulation. A reduction in any inflation premium in the initial interest rate charged by national banks on ARM loans may further reinforce the downward rate pressures of this competitive effect. The initial interest rate on an ARM does not have to include a premium, as a fixed-rate mortgage loan presumably does, against unexpected increases in the rate of inflation.

Regulation will offer the further benefit of ensuring that banks make adjustable-rate mortgage loans within a framework of borrower protection. In particular, a public accustomed to fixed-rate mortgage loans needs to be informed of the risks and nature of adjustable-rate mortgage instruments. Also, it may be desirable to protect borrowers against rapid escalation of mortgage cost by limiting interest rate or payment changes.

Summary of Costs

Sectors Affected: National banking industry; customers and shareholders of national banks; and the general public. We expect the costs of this regulation to be negligible. If banks adopt the use of ARM's on a widespread basis, the overall cost of mortgage borrowing may actually

decrease, as stated above. Further, we expect the additional costs resulting from implementation of this regulation for national banks to be negligible. Start-up costs for adjustable-rate lending consistent with any regulation of the Comptroller of the Currency will not vary significantly from the start-up cost which might result from such lending in the absence of a regulation. Most national banks are not presently engaged in adjustable-rate mortgage lending. The proposed regulation will also minimize disclosure costs through the prescription of model disclosure forms, the use of which will constitute compliance with any disclosure requirements imposed.

Related Regulations and Actions

Internal: None.

External: The Federal Home Loan Bank Board has promulgated two sets of regulations affecting Federal savings and loan associations engaging in adjustable-rate mortgage lending. Those regulations, found in 12 CFR Part 545, impose disclosure requirements and set limitations on permissible interest rate charges. In addition, one of the sets of regulations concerning variable-rate mortgages requires institutions offering such instruments to offer fixed-rate mortgages as well and to disclose, in side-by-side comparison tables, the costs to the borrower of the worst case under a variable-rate mortgage instrument compared with the costs of a fixed-rate mortgage loan.

Approximately eleven States regulate adjustable-rate mortgage lending within their borders. Their rules apply to either all lenders or specified classes of lenders, but they do not affect Federal savings and loan associations, which are subject to the Federal Home Loan Bank Board's rules. Two of the States prohibit adjustable-rate mortgage lending. The other nine impose rather narrow limits within which interest rates may be adjusted.

Active Government Collaboration

The Office of the Comptroller of the Currency will expressly solicit comment by sending copies of any proposal to the banking authorities of the 50 states and to the Federal Home Loan Bank Board, the Federal Reserve Board, the Federal Home Loan Mortgage Corporation, and the Federal National Mortgage Association.

Timetable

Regulatory Analysis—OCC will not prepare. Our initial investigation implied there would be little, if any, cost associated with affirmative

authorization of adjustable-rate mortgages.

Public Hearings—Depending upon interest expressed, perhaps in several cities across the United States, near the end of the comment period.

Public Comment Period—September 29, 1980 to November 28, 1980.

Comments may be addressed to Docket No. 80-10, Communications Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, S.W., Washington, DC 20219.

Final Rule—Early 1981.

Final Rule Effective—30 days following Federal Register publication.

Available Documents

Testimony of Senior Deputy Comptroller for Policy before House Government Operations Subcommittee, March 27, 1980.

Semiannual Agenda—45 FR 52168, Docket No. 80-7, August 6, 1980.

NPRM—45 FR 64196, Docket No. 80-10, September 29, 1980.

These documents are available for review and photocopying in the Communications Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, S.W., Washington, DC 20219.

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TREAS-OCC

Description of Office, Procedures, Public Information (12 CFR 4*); Supplemental Application Procedures (12 CFR 5*); Assessment of Fees; National Banks; District of Columbia Banks (12 CFR 8*); Employee Stock Option and Stock Purchase Plans (12 CFR 13*); Changes in Capital Structure (12 CFR 14*); Change in Bank Control (12 CFR 15*); Federal Branches and Agencies of Foreign Banks (12 CFR 28*); Policy Statements (41 FR 47964*)

Legal Authority

12 U.S.C. § 93a.

Reason for Including This Entry

Treasury believes this action is significant because it entails a comprehensive review of all rules, policies, procedures, and forms that the Office of the Comptroller of the Currency (OCC) uses to govern

applications for all structural and corporate activities of national banks. We believe such a review could result in enhanced competition and efficiency in the supply of financial services to bank customers. For this reason, we feel this action is of great public interest, and that it could have a significant positive impact on the economy.

Statement of Problem

The OCC has authority over the corporate activities of the approximately 4,500 national banks. Each of those banks may file various applications with the OCC at any time. In 1979, for example, OCC received approximately 87 charter applications, 984 branch applications, 100 merger applications, and hundreds of additional applications for changes in capital structure, relocations, operating subsidiaries, title changes, and other matters.

OCC rules, policies, procedures, and forms for the various structural and corporate activities of national banks have not been substantially reviewed or revised since November 1976. Since that time, the banking system has experienced substantial changes and many new laws were enacted which may have altered the appropriateness of existing OCC rules, policies, procedures, and forms covering filings for various structural and corporate activities.

In addition, the OCC believes that its regulations and policies governing the procedures it uses in evaluating those filings should be periodically reviewed, with input from national banks and other members of the public. The OCC also believes that the corporate filing process should not create unnecessary delays and costs. Forms and processing procedures should not require the submission or review of unnecessary information while failing to elicit information vital to an appropriate decision.

Accordingly, the OCC has started a comprehensive review of this area and has labeled this review the Corporate Activities Review and Evaluation (CARE) Program.

Ultimately, this review should:

- (1) lower costs to the applicants, the OCC, and the public;
- (2) provide a better understanding of OCC policies;
- (3) modify or eliminate OCC rules, regulations, policies, procedures, and forms that are unnecessary or lead to inefficiencies; and
- (4) remove barriers to competition.

The first phase of the CARE Program has been completed. Included in this phase is a reorganization and consolidation of all rules, policies, procedures, and forms for national bank

structural and corporate activities, which previously were located in numerous Parts of the Code of Federal Regulations and other documents, into a single regulation—12 CFR 5. This action should make it easier for all interested parties to locate and understand present requirements plus enable the OCC to review its policies, the need for additional policies, existing regulations, and methods, and to improve its decision criteria and to reduce inappropriate burdens on applicants. Other areas covered in this first phase include:

- (1) a policy statement governing OCC evaluation of applications for a national bank charter;
- (2) a policy statement governing public disclosure by the OCC of material filed with notices of change in control of a national bank;
- (3) proposed rules to be followed by OCC in determining whether or not a public hearing should be held in connection with an application for any corporate activity (charter, branches, etc.); and
- (4) proposed procedures enabling the OCC to treat expeditiously applications for interim banks.

The areas that are being or will be addressed include:

- (1) developing procedures and forms to be used by banks applying for branches, mergers, stock options, Federal branches and agencies, conversions, location and title changes, changes in capital structure, and subordinated debt;
- (2) assessing stock appraisal rights of dissenting shareholders in merger type transactions; and
- (3) developing criteria to be employed by the OCC in evaluating applications.

Alternatives Under Consideration

Although proposed changes will be issued for comment on a subject-by-subject basis (i.e., branches, mergers, etc.), the major alternatives common to each involve the choice between current or lesser levels of government intervention in the business judgments of national banks. OCC's intent is to eliminate unnecessary interference in the business decisions of national banks. For example, OCC will consider whether national banks in sound condition desiring to branch or issue subordinated debt should be permitted to do so with lesser filing requirements and lesser review procedures than are currently in effect.

Summary of Benefits

Sectors Affected: National banking industry; customers and shareholders

of national banks; the general public; and OCC.

The benefits of lesser government intervention could include enhanced competition and efficiency in the supply of financial services. Experience has shown that the marketplace normally is the best regulator of economic activity and that competition allows the marketplace to function and promotes a sound and more efficient banking system that better serves customers. In addition, OCC and applicants' direct and indirect costs may be reduced by this lesser amount of intervention. Unnecessary requirements should be eliminated, speed of processing corporate filings increased, and the quality of OCC and banker decisions enhanced. Because OCC will continue to regulate the national banking system where some intervention is necessary to protect the public interest, the revisions to its corporate rules, policies, procedures, and forms will ensure that poor bank decisions are not implemented to the detriment of the bank, its customers, shareholders and communities.

Summary of Costs

Sectors Affected: National banking industry; customers and shareholders of national banks; and the general public.

The costs of lesser government intervention include possible implementation of poor business decisions by individual banks, which could increase operating costs that would be passed on to customers and shareholders, or possible increases in the number of individual banks exiting from the banking system through mergers or failures.

Related Regulations and Actions

Internal: None.

External: Each of the 50 States has rules governing applications for State-chartered banks. Regulations of the Board of Governors of the Federal Reserve System are included in 12 CFR 262, 263, and 265. Federal Deposit Insurance Corporation regulations are included in 12 CFR 303, 304, 306 and 308.

Active Government Collaboration

OCC will send proposals it issues for comment to the banking authorities for each of the 50 States and to the Board of Governors of the Federal Reserve System and Federal Deposit Insurance Corporation.

Timetable

NPRM—Stock appraisal rights of dissenting shareholders, November 30, 1980.

NPRM—Policy statements on OCC evaluation of applications for branches, changes in title, relocation, and OCC evaluation of employee stock option plans, December 31, 1980.

NPRM—new forms for charter applications, December 31, 1980.

Regulatory Analysis—OCC will not prepare. Our initial investigation of suggested costs, if any, to affected parties will be minor.

Public Hearing—None planned.

Public Comment Period—We have grouped issues under review topically with each topic cutting across several regulations, and each having its own comment period. We expect the total period to be September 1980 to July 1981. Recently issued NPRMs call for a public comment period from September 1980 to November 1981. Comments may be sent to Communications Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, S.W., Washington, DC 20219.

Final Rules—Since we are reviewing a number of issues, several rules are involved. We project publication of Final Rules over a period of time, probably December 1980 to July 1981.

Available Documents

Policy Statement—41 FR 47964, November 1, 1976.

Semiannual Agenda—45 FR 52166, Docket No. 80-7, August 6, 1980.

NPRM—45 FR 68611, Docket No. 80-14, October 15, 1980. (Proposes amendments to OCC's rules governing use of public hearings to acquire additional information prior to evaluating applications for charters, branches, mergers, change in title, and location and changes in capital.)

NPRM—45 FR 68612, Docket No. 80-15, October 15, 1980. Proposes amendments to OCC rules governing material to be submitted in support of an application to charter an interim bank.)

Final Rule—45 FR 68586, Docket No. 80-11, October 15, 1980. (Consolidates all existing OCC rules, policies, procedures, and forms concerning the review and processing of applications for charters, branches, mergers, changes in title and location, and changes in capital into a single regulation—12 CFR 5.)

Final Rule—45 FR 68603, Docket No. 80-12, October 15, 1980. (Codifies OCC chartering policy in 12 CFR 5 and describes the analytical framework used by the OCC to determine whether a proposed national bank is likely to be operated in a safe and sound manner,

possess reasonable prospects for success, and can be expected to meet the credit needs of its entire community.)

Final Rule—45 FR 68607, Docket No. 80-13, October 15, 1980. (Specifies the circumstances under which the OCC will routinely release basic information contained in notices of change in control required by 12 CFR 15.)

These documents are available for review and photocopying in the Communications Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, S.W., Washington, DC 20219.

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TREAS—OCC

**Lending Limits (12 CFR 7.1100*);
Unimpaired Surplus Fund (12 CFR
7.7545*)**

Legal Authority

12 U.S.C. § 93a.

Reason for Including This Entry

The Office of the Comptroller of the Currency (OCC) is proposing to change the definition of "capital," thereby affecting the activities of all national banks, State and local governments, and the general public.

Statement of Problem

The OCC charters, examines, regulates, and supervises national (i.e., federally-chartered) banks. Maintaining adequate capital in national banks is an important part of OCC's goal to ensure a safe and sound national banking system. OCC is considering changes to its policy and procedures for assessing the adequacy of capital of individual banks. In connection with that effort, OCC is reviewing its interpretive rules which define capital for statutory purposes.

Various statutes limit the extent of a national bank's activities based on the amount of its capital. These activities include, among others, holding investment securities, establishing branches, borrowing, lending to a single entity or group of related entities, lending secured by real estate, and lending to affiliated entities. In some cases, the limitation is on the aggregate extent of activity; in others, the limitation is on the magnitude of the

activity as it relates to single bank customers. Adoption of OCC's proposal to change the definition of capital would affect all those activities.

Immediate changes in the interpretive rulings which define capital under those statutes would have instant impact on all national banks. Those changes would also have an impact on borrowers from national banks, State and local governments which issue securities, national bank shareholders, and other members of the public.

Capital planning is an integral element in the management of every national bank. Assuring adequate capital in national banks is an important element of bank supervision. Although maintaining adequate capital in the national banking system is a continual task of the OCC, several recent factors present in the financial system have increased the OCC's attention to the subject. These factors include, among others, the effects on bank capital of inflation-generated growth in bank assets and liabilities.

In order to develop and implement a consistent, rational capital adequacy policy, an appropriate definition of capital is necessary. The present OCC definition includes (for most, but not all purposes) all shareholders' equity accounts, subordinated notes and debentures (long-term debt securities whose holders' rights are subordinated to the rights of depositors and other creditors), and 50 percent of the reserve for possible loan losses (a contra-asset account reflecting expected losses in the loan portfolio). That definition is inconsistent with definitions used by the Board of Governors of the Federal Reserve System and by the Federal Deposit Insurance Corporation in their supervision of State-chartered banks. OCC is working with those agencies to develop a consistent definition of capital and a more uniform capital adequacy policy. In light of recent economic conditions and uncertainty as to the future, OCC believes that a revised, consistent, rational capital adequacy policy (based on an appropriate definition of capital) is necessary at this time to supervise and monitor national banks properly and to assist banks in their own analyses and planning.

Alternatives Under Consideration

OCC is considering alternatives to the statutory definition of capital and alternative implementation programs. One alternative is to make no change. A disadvantage of that approach is that it would inhibit the development of well-conceived capital adequacy policies. Implementation costs associated with change would, of course, be avoided.

The OCC has proposed deleting the reserve for possible loan losses from the statutory definition of capital. That contra-asset account reflects the difference between the face amount of all loans outstanding on the books of the bank and the amount the bank anticipates will be repaid. As such, it is a protective cushion for the sole purpose of absorbing probable loan losses. The advantage of deleting the reserve for possible loan losses is that the revised definition of capital would then be more reflective of what is considered by most financial experts as capital. It would also limit capital to those accounts representing shareholder equity which are available to absorb loan losses, thereby granting the bank sufficient time for earnings to recover while sustaining market confidence. The disadvantage of deleting this account from the definition of capital is that it would reduce the maximum size of certain loans and investments that may presently be made by national banks.

The OCC also has proposed deleting subordinated notes and debentures from the definition of capital. Although those debt instruments reflect some of the characteristics of capital when they have distant maturities, they must be repaid, interest payments are mandatory, and they become increasingly less like capital instruments as maturity dates approach. The advantage of eliminating subordinated debt from the statutory definition is that the entire capital account will be available to absorb unforeseen losses which may be experienced by an otherwise sound institution. A disadvantage of elimination is a curtailment of various bank activities presently subject to limitations based on bank capital.

In order to avoid disruptions in the ongoing conduct of banking operations, the OCC has proposed to implement those changes over time. The delayed impact would enable banks to plan adequately for any necessary changes. Another advantage is that anticipated growth in other components of capital will minimize the reductions in banking activities inherent in the proposals. As such, it is proposed that the reserve for possible loan losses be eliminated as of December 31, 1981, and that subordinated notes and debentures be eliminated at maturity or December 31, 1985, whichever occurs first.

The OCC considered other implementation options before it issued the proposal. Significant options considered included:

(A) eliminating only subordinated notes and debentures with short maturities;

(B) establishing a timetable to reduce, in stages, the percentage of the reserve and subordinated debt which may be included in the definition (i.e., a phase-out over time); and

(C) allowing outstanding long-term subordinated debt to be included until its maturity, but excluding new debt regardless of its maturity.

OCC is soliciting comments on specific questions germane to the proposal. These include:

(1) what terms, e.g., length to maturity, or mandatory conversion features might qualify subordinated notes and debentures as capital;

(2) what other forms of capital instruments exhibit sufficient characteristics to qualify as equity; and

(3) whether subordinated notes and debentures issued or outstanding at any time prior to December 31, 1985 should be included.

Summary of Benefits

Sectors Affected: National banking industry; customers of national banks; the general public; and OCC.

Adequately capitalized banks permit a broad range of banking services to be offered competitively to the public. Improvements in capital analysis will have nonquantifiable benefits for national banks and their customers by improving the ability of bankers, regulators, and the public to assess capital adequacy and by maintaining public confidence. Related OCC decisions to be made, such as the need for OCC review of bank plans to issue debt and equity, may reduce burdens on applicants and the OCC, and are expected to result in expanded abilities in national banks to take advantage of market opportunities to issue appropriate securities. The proposal would also establish a more uniform definition of capital, for statutory purposes, among the Federal bank regulatory agencies and eliminate regulatory treatment of banks, which currently is often varied, in more or less similar circumstances.

Summary of Costs

Sectors Affected: National banking industry, particularly in rural areas; and customers of national banks, including businesses and State and local governments.

Reduction in capital, as defined, will further limit a variety of national bank activities. For example, current statutes generally permit a national bank to lend to an individual entity no more than 10 percent of its defined capital. Similarly, current statutes generally permit a national bank to invest in a revenue

obligation issued by a State or local government in an amount no greater than 10 percent of its defined capital. Reducing the amount of defined capital will decrease the maximum lending and investment limits at every national bank.

OCC has performed a preliminary study based on information otherwise filed by national banks, indicating:

(1) that 999 of the country's approximately 4,500 national banks have subordinated debt outstanding in an aggregate amount approximating \$3.3 billion;

(2) that many of those banks have equity capital to asset ratios below the average level for banks of similar size; and

(3) that the average decrease in maximum lending limits for those banks, if subordinated debt were excluded from the definition of capital, would be 12.8 percent. Similarly, the average reduction in maximum lending limits for all national banks, should the reserve for possible loan losses be excluded from the definition of capital, would be approximately 4.5 percent.

That analysis, by itself, does not, however, indicate whether the changed limits would affect actual bank performance. For example, the preliminary analysis might indicate that a specific national bank's lending limit to a single borrower would be decreased from \$100,000 to \$90,000 if the proposals were adopted without a delayed effective date. If that bank has not made and does not intend to make loans to a single borrower in excess of \$70,000, the changes would have little impact. Conversely, if that bank has been making loans at its limit and its present and future customers were likely to need loans in amounts approaching the bank's lending limit, the effects of the changes could be more dramatic. However, the anticipated growth in other components of capital between the date of adoption of the changes and the delayed effective dates, as proposed, would significantly decrease the likelihood of adverse disruptive consequences. Accordingly, in its NPRM, OCC specifically requested input on the extent of adverse effects the proposal would have. Comments received suggest that the proposed changes could have greater adverse consequences for banks, businesses, and local governments in rural areas, compared to others areas, if banks in those rural areas have significant amounts of subordinated debt outstanding. Such banks have access to fewer sources of equity funds and would thus find it difficult to keep total capital

at desired levels as the debt portion was phased out.

Related Regulations and Actions

Internal: Section 303 of the *Comptroller's Handbook for National Bank Examiners* describes the present capital adequacy analysis.

External: Each of the 50 States has capital definitions and limitations based on capital applicable to State-chartered banks.

Active Government Collaboration

OCC has been working with the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation to develop a uniform capital adequacy policy and definition of capital. Meetings among staff are, and will continue to be, held frequently.

Timetable

Regulatory Analysis—OCC will not prepare. Our initial investigation indicated costs to affected parties will be negligible.

Public Hearing—None planned.

Final Rule—December 31, 1980.

Final Rule Effective—To be determined.

Available Documents

NPRM—45 FR 49276, Docket No. 80-6, July 24, 1980.

Semiannual Agenda—45 FR 52166, Docket No. 80-7, August 6, 1980.

Comptroller's Handbook for National Bank Examiners, Section 3.

Public comments on NPRM (public comment period closed September 20, 1980.)

Those documents are available for review and photocopying in the Communications Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, S.W., Washington, DC 20219.

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TREAS-OCC

Use of Data Processing Equipment and Furnishing of Data Processing Services (12 CFR 7.3500*)

Legal Authority

12 U.S.C. §§ 24 and 93a.

Reason for Including This Entry

The Office of the Comptroller of the Currency (OCC) includes this entry because of the possible significant impact on the activities of all national banks, the data processing industry, and the general public.

Statement of Problem

The OCC regulates and supervises national (*i.e.*, federally-chartered) banks. OCC Interpretive Ruling 7.3500, last revised in 1974, attempts to define by generic description and by example the data processing services which a national bank may lawfully provide for itself and others pursuant to 12 U.S.C. § 24. That ruling currently permits national banks to perform all data processing services directly or incidentally related to the business of banking. As examples under the existing ruling, a national bank may collect, transcribe, process, analyze and store, for itself and others, banking, financial, or related economic data, as part of its banking business. Additionally, the ruling notes that a national bank, incidental to its banking business, may market excess time on data processing equipment and sell the by-products of data processing activity under certain defined circumstances. Finally, the ruling emphasizes Federal prohibitions against national banks tying other banking services to customer use of data processing facilities.

Since Interpretive Ruling 7.3500 was last revised in 1974, there have been rapid and profound advances in both data processing technology and the application of that technology to the financial industry. Moreover, experience with the application and interpretation of the Interpretive Ruling indicates that a more precise delineation of permissible data processing activities by national banks may be needed. Accordingly, the OCC is considering whether the existing ruling accommodates technological advances and provides adequate guidance, or whether the ruling should be revised and, if so, how.

To this end, the OCC issued an ANPRM inquiring into a wide range of subjects. We solicited comments on the types of electronic data processing (EDP) services offered by banks; the advantages and disadvantages of banks as providers of data processing; the extent to which the sale of EDP services, software, and excess time is necessary or beneficial to acquisition and maintenance of an adequate EDP capacity by banks; and foreseeable new applications of EDP technology.

Alternatives Under Consideration

The OCC has defined the following alternatives, described more fully in the ANPRM:

(A) OCC could retain the ruling as now written;

(B) OCC could revise the ruling to include a new generic description of permissible data processing activities;

(C) OCC could revise the ruling to adopt standards similar to those articulated in the present regulation and the interpretive ruling of the Board of Governors of the Federal Reserve System concerning data processing services provided by bank holding companies;

(D) OCC could retain its current ruling and provide supplemental aids such as a listing of specific activities found to be permissible under the ruling; and

(E) OCC is also considering the promulgation of a formal regulation as an alternative, or in addition to, an interpretive ruling.

Summary of Benefits

Sectors Affected: National banking industry; the data processing industry; customers of national banks; the general public; and OCC.

Until both the form and substance of any revision in the interpretive ruling are known, it is impossible to predict the benefits expected from such a revision. Nevertheless, a more specific interpretive ruling would provide additional guidance concerning the nature of data processing services which may lawfully be offered by national banks. By identifying those data processing services that are incidental to the business of banking, the OCC could eliminate confusion regarding the application of the existing ruling to specific services, which would benefit both the national banking and data processing industries. Finally, such a revision would benefit the public because it would provide greater certainty to banks which may be deterred from offering the public financially related data-processing services because of the legal questions raised under the existing ruling.

Summary of Costs

Sectors Affected: National banking industry; the data processing industry; customers of national banks; the general public; and OCC.

Until both the form and substance of any revision are known, it is impossible to predict the costs expected from such a revision. Nevertheless, specific guidelines in the area of electronic data processing technology might unduly limit the flexibility needed by banks to

accommodate technological change. Also, such guidelines could become rapidly outdated, requiring continual modification by the OCC. Thus, a less flexible interpretive ruling might retard the development and financial application of data processing technology by national banks. Such an impediment would adversely affect the data processing industry and the general public which would otherwise benefit from such innovations.

Related Regulations and Actions

Internal: None.

External: The present regulation and interpretive ruling of the Board of Governors of the Federal Reserve System concerning data processing services provided by bank holding companies appears at 12 CFR 225.4(a)(8) and 12 CFR 115.123(e), respectively.

Active Government Collaboration

None at present.

Timetable

NPRM—December 1, 1980.

Regulatory Analysis—We will determine if one is required after reviewing the public comments and determining the precise content of the NPRM.

Public Hearing—None planned.

Public Comment Period—December 1, 1980 to January 31, 1981. Comments may be sent to Communications Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, S.W., Washington, DC 20219.

Final Rule—March 31, 1981.

Final Rule Effective—March 31, 1981.

Available Documents

Interpretive Ruling 12 CFR 7.3500.

ANPRM—45 FR 40613, Docket No. 80-1, June 16, 1980.

Semiannual Agenda—45 FR 52166, Docket No. 80-7, August 6, 1980.

Public Comments.

Those documents are available for review and photocopying in the Communications Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, S.W., Washington, DC 20219.

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NATIONAL CREDIT UNION ADMINISTRATION

Group Purchasing Activities of Federal Credit Unions (12 CFR 721.1* and 721.2*)

Legal Authority

Federal Credit Union Act 12, U.S.C. §§ 1752(1), 1757(15), and 1766(a).

Reason for Including This Entry

The National Credit Union Administration (NCUA) includes this entry because we have recently discovered that there may have been a number of abuses of the authority now exercised by Federal credit unions under the present regulations. Such abuses may be due in part to a lack of clarity in the present regulations. Our review of the existing regulations will further define the type of services that Federal credit unions can offer as financial cooperatives. Our review will also affect the way insurance companies and consumer product and service vendors market their goods and services.

Statement of Problem

Federal credit unions are financial cooperative associations, chartered by the Federal Government for the purpose of promoting thrift among their members and making loans to their members. The members of Federal credit unions must have a common bond of occupation (such as employees in the same factory) or association (such as members of a local fraternal lodge) or must be within a well-defined neighborhood, community, or rural district.

In addition to specific enumerated powers (such as paying dividends on members share (savings) accounts and granting loans, a Federal credit union can, according to the Federal Credit Union Act, "exercise such incidental powers as shall be necessary and requisite to enable it to carry on effectively the business for which it has been incorporated" (12 U.S.C. § 1757(15)). NCUA interprets "incidental powers" authority in light of the Federal Credit Union Act definition of a Federal credit union: "... a cooperative association organized . . . for the purpose of promoting thrift among its members and creating a source of credit for provident and productive purposes" (12 U.S.C. § 1752(1)). In 1972, NCUA issued 12 CFR 721.1, which permits Federal credit unions to facilitate their members' voluntary purchase of insurance, incidental to the promotion of thrift or to the borrowing of money. NCUA limited credit unions to facilitating their members' voluntary

purchase of group disability coverage related to loan obligations, and group insurance related to share (savings) accounts, life savings and loan protection insurance, and group, fire, theft, automobile, life, and disability insurance. Finally, NCUA decided, pursuant to 12 CFR 721.2, that Federal credit unions could promote thrift among their members by informing their members of the availability of group purchasing plans for goods and services other than insurance.

NCUA placed certain limitations on Federal credit unions to make sure that Federal credit unions maintained their identity as financial cooperatives. Federal credit unions can inform their members as to the availability of insurance or group purchasing plans, but cannot endorse the insurance or the purchasing plan. In order to maintain the privacy of their members, Federal credit unions are prohibited by NCUA from making mailing lists available to the insurance company or vendor. Federal credit unions are not permitted to act as an agent for an insurance company. When making credit-related insurance available to its members, Federal credit unions must inform borrowers that they may purchase coverage from another insurance company. Finally, Federal credit unions are permitted to accept reimbursement from the insurance company or vendor, but only for actual costs of administrative tasks performed by the credit union.

A recent study conducted by NCUA indicates that a number of instances exist of possible abuse of this "incidental authority." For example, in some cases, credit unions offer types of insurance, such as cancer insurance, which many studies show to be of dubious value to consumers. Credit unions apparently have provided, in some cases, mailing lists of their members to insurance companies and other vendors. These vendors use the lists for purposes not intended by the credit union. Eighteen of seventy credit unions surveyed had violated the prohibition against providing mailing lists to vendors. Some credit unions enter into agreements with insurance companies or other vendors that indicate that the credit union is, in effect, serving as an insurance agent by filing applications and processing claims. A number of credit unions surveyed by NCUA are lax in making it clear to their members that loan-related insurance offered through the credit union is voluntary and that members may obtain such insurance from other sources. Finally, many credit unions receive compensation not attributable to

their costs in providing informational material (such as brochures) and performing paperwork-related tasks. Instead, insurance companies compensate the credit union based on a percentage of the dollar amount of the insurance purchased by the credit union's members.

NCUA has decided to act on this problem at this time for a number of reasons. First, an NCUA study has indicated that credit unions are involved in the sale of a type of insurance which may be of dubious value to their consumer members. Second, random examinations by NCUA have indicated a number of apparent violations of the existing regulations, some possibly due to a lack of a clear understanding of the requirements of the regulations. Finally, NCUA is reviewing all its existing regulations in accordance with our Final Report, "In Response to E.O. 12044: Improving Government Regulations," and as required by § 804 of P.L. 96-221, the Financial Regulation Simplification Act of 1980. NCUA is required to review its existing regulations periodically.

If we take no action at this time, the abuses noted above may continue, and perhaps, worsen. Federal credit unions may rely more heavily on the income derived from their participation in these sales programs, although compensation above their actual costs is a violation of present regulations. This, in turn, may lead to credit union involvement in other commercial ventures totally unrelated to their identities as financial cooperatives. This may violate the Federal Credit Union Act. Lastly, credit unions may continue to be involved in the sale of insurance or products and services which may be of dubious value to their members. Credit union members rely on their credit unions for advice. If credit unions offer insurance or products that are not worthwhile, this may endanger member loyalty.

Alternatives Under Consideration

NCUA is considering a number of alternatives; however, we do not currently favor one alternative over the others.

(A) We could make no change to the existing regulations, 12 CFR 721.1 and 721.2, but issue an "Interpretive Ruling and Policy Statement" (IRPS) to clarify ambiguities in the regulation. This may solve the problem by placing credit unions on notice of NCUA's position and of our intent to take administrative action against violators. This alternative has the advantages of clarifying ambiguities, permitting credit unions to seek compliance with existing regulations, and continuing to permit credit unions to offer a wide range of

group purchasing activities. The disadvantages are that the clarification and warning of possible enforcement action may not prevent all continued violations. Investigation and prosecution of violations could tax NCUA's resources heavily. Lastly, this alternative would not offer assurance that credit unions will give their members adequate information about the plans offered through their credit union.

(B) We could revise the existing regulations to require credit unions to consider the programs more carefully, to require mailing lists to remain in the control of the credit union, and to prohibit compensation of the credit union. Insurance companies and other vendors would not have access to the credit union's mailing list because the company mailing any information to credit union members would act as the agent of the credit union and not as the agent of the insurer or vendor. This alternative would eliminate the problem of compensation in excess of costs by prohibiting compensation. It would also ensure closer examination of products and services by credit unions because this alternative would require that a credit union provide a written justification of the decision to participate in a group program. The advantage of this alternative would be that credit unions can continue to offer a variety of group plans, while the innovative regulatory technique of economic disincentives would discourage participation in programs that are not especially valuable to the credit union members. Another advantage of this alternative would be that mailing lists remain in the control of the credit union or its agent. In addition, by prohibiting compensation, this alternative would eliminate the possible conflict of interest between increasing income for the credit union versus providing credit union members with information on valuable services. The disadvantages are that the credit union will have to find income to meet the expenses associated with insurance activities (and possibly other expenses) elsewhere, because NCUA will prohibit compensation. Also, credit unions may circumvent the prohibition on compensation if vendors offer lower costs to the credit union for the credit union's own purchases. Another risk is that the credit union may place greater emphasis on considering its own costs than on the quality of the plan to be offered to its members. Mailing list abuse may continue because the credit union's data processor or mailing firm

may work for a vendor and may share the mailing list with the vendor.

(C) We could, by revising the regulation, permit only group purchasing activities related to insurance and directly related to loans or savings, and prohibit reimbursement of expenses by vendors. This alternative could solve the problem of whether Federal credit unions can act as economic cooperatives by limiting their group purchasing activities to those related directly to financial services. It would eliminate the need for the use of mailing lists because credit unions can give the information to a prospective borrower or saver when the loan is made or the account is opened. This alternative would eliminate the problem of calculating costs for determining the amount of reimbursement for administrative tasks performed by the credit union. Other advantages of this alternative would be the elimination of certain types of insurance which are of dubious value and the elimination of mailing list violations, because information would be provided directly to the borrower only at the time of the loan application. One disadvantage would be increased cost to credit unions because this alternative would prohibit reimbursement. Another disadvantage would be that the credit unions may choose the insurance plan that is least costly to the credit union although the plan may not be the most beneficial to its members. Group purchasing plans for products or services other than insurance would be prohibited and thus the types of services that credit union members could receive would be limited.

(D) We could permit the credit union community to attempt self-regulation. This could solve the problem by allowing a committee of representatives of credit unions, credit union members, insurance companies, and vendors to develop guidelines to prevent the identified abuses. This committee would be necessary to ensure that there is a broad base of interests represented in the formulation of voluntary standards. The advantages of this approach would be the use of voluntary standards, in lieu of binding regulations, through increased industry cooperation. The disadvantages are the administrative problems involved, in coordinating an industry committee to develop guidelines. NCUA is uncertain of the effectiveness of any voluntary guidelines. Finally, there may arise an appearance of an abdication of NCUA responsibility.

(E) We could, by revising the regulation, ban all group purchasing

plans except those purchased by the credit union for all qualified members. This alternative could solve the problem by placing the economic risk of involvement in group purchasing plans on the credit union directly. The advantages of this approach are that it would give the credit union the incentive to obtain the best coverage for the least cost because it would derive the primary benefit (for example, the credit union will receive payments on loans covered by loan protection insurance that might otherwise go into default) and bear premium cost. This alternative would allow the credit union to receive commissions from the sales of its group insurance from the vendor (which the credit union could use to reduce its own premiums). Credit union members would still obtain the advantages of group purchasing. The disadvantages are that members who may not want to obtain these services would bear part of the costs to the credit union, because all members might receive lower dividends, higher interest rates on loans, or reduced services. The credit union's investment may act as a disincentive for advising members that they may obtain these services elsewhere. If certain types of insurance are extended to members already covered under their own personal insurance plans, these members may receive no additional benefit if the insurance plan prohibits the insured from collecting twice on the same loss. Finally, this alternative eliminates a wide range of group purchasing activities, because the credit union could not afford the initial cost or the economic risk.

Summary of Benefits

Sectors Affected: Federal credit unions and their members; insurance industry; and wholesale and retail trade of consumer products.

The primary benefit of alternative (A) is that the credit union would continue to offer a wide range of group purchasing activities. This may benefit the credit union by increasing member interest in, and loyalty to, the credit union. The members would also benefit from the reduced costs associated with group purchasing plans. Insurance companies and consumer product vendors would benefit from continuing to use credit unions as a vehicle to market their services or products. Finally, clarification through the issuance of an interpretive ruling should not substantially alter or restrict present limitations. This may benefit credit unions, insurance companies, and other vendors that are familiar with operating under the present rules.

Alternative (B) may have the benefit of protecting credit union members' privacy by prohibiting the distribution of mailing lists to insurance companies or vendors. While continuing to allow credit unions to offer a wide range of group purchasing plans, this approach may have the advantage of eliminating less valuable plans through the use of economic disincentives. Since the credit union cannot be reimbursed, the credit union would more carefully select the group purchasing plan. The credit union would, therefore, no longer face the conflict of interest between choosing a plan that compensates the credit union or choosing a plan best suited for its members.

Alternative (C) may have the advantage of ensuring that group purchasing plans would be directly related to the financial services offered by credit unions. It would also eliminate the mailing list problem because the credit union or vendor could give information to a member at the time he or she applies for the services. It would also use economic disincentives to ensure that the credit union carefully chooses the group purchasing plan because the credit union cannot be reimbursed for its expenses.

Alternative (D) may have the advantage of permitting industry self-regulation, thus reducing the regulatory burden imposed by and on NCUA.

Alternative (E) may have benefit of using economic incentives, rather than regulation, because the credit union would purchase the group plan. It would allow reimbursement to the credit union through its sales to its members. Also, it would permit credit unions the freedom to select from a wide range of group purchasing plans.

Summary of Costs

Sectors Affected: Federal credit unions and members; insurance industry; and wholesale and retail trade of consumer products.

The dollar estimate of the costs of the various alternatives listed below are not available to NCUA at this time. We are considering issuing an ANPRM to solicit cost information.

The primary costs of alternative (A) may be those associated with the current abuses of existing regulations. Credit unions would continue to violate the privacy of their members by distributing mailing lists. Credit unions would continue to act as insurance agents and to receive compensation in excess of their costs.

Alternative (B) may increase costs to the Federal credit union. This, in turn, may harm consumers because credit unions may select programs that are

least costly to operate, rather than programs that are most beneficial to their consumer members. Also, by permitting credit unions to distribute mailing lists to mailers that are employed by the credit union, this alternative places the burden of enforcement on the credit union to ensure that the mailer does not breach his contract with the credit union by making the list available to vendors.

Alternative (C) also may increase credit union costs by prohibiting reimbursement. It also may lead credit unions to choose insurance plans least costly to the credit union without regard to the benefits provided to the members. This alternative may also reduce the income of wholesalers and retailers who rely upon the group purchasing activities (other than insurance) provided through credit unions. To the extent that these group purchasing plans provide real savings to consumers, credit union members' costs could increase in those areas in which such plans are prohibited.

Alternative (D) may continue the costs associated with the current abuses of the existing regulations. It could also impose additional costs on the credit union industry to produce and distribute voluntary guidelines.

Alternative (E) would increase costs to credit unions because any group purchasing plan must be bought by the credit union. To the extent that this alternative results in fewer plans being offered to members, the members' costs may also increase.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

Preliminary Review by NCUA Staff—December 31, 1980.

ANPRM—To be determined.

NPRM—To be determined.

Public Comment Period—60 days following publication of NPRM.

Public Hearing—Not anticipated.

Final Rule—To be determined.

Regulatory Analysis—To be determined.

Available Documents

Memorandum from Office of Policy Analysis to NCUA Board, dated June 5, 1980, "Evaluation of Federal Credit Union Group Purchase Plans."

Abt Associates, Inc., "Cancer Insurance Costs and Benefits: A Study for the Board of the National Credit Union Administration," May, 1980.

The above documents are available for review in the Office of General Counsel, National Credit Union Administration, 1776 G Street, N.W., Washington, DC 20456.

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COMMODITY FUTURES TRADING COMMISSION

Large Trader Reporting to Exchanges and Reporting Open Positions (17 CFR Parts 15*, 16*, 17*, 18*, and 21*)

Legal Authority

Commodity Exchange Act, §§ 4g, 4i, 5(d), and 8a(5), 7 U.S.C. §§ 6g, 6i, 7(d), and 12a(5).

Reason for Including This Entry

The Commodity Futures Trading Commission (CFTC) thinks these rules are important because they would shift primary responsibility for the collection of key market surveillance data from the Commission itself to the commodity exchanges. If we adopt these rules, the exchanges will be better equipped to prevent price manipulations, cornering of commodities and other market disturbances, and the Commission will be able to act more in an oversight role and less as a primary regulator. This will set an important precedent.

Statement of Problem

The Commission and the commodity exchanges both have obligations under the Commodity Exchange Act to prevent price manipulation, corners and other disruptions in the futures markets. In order to detect market disruptions, the Commission and the exchanges both conduct market surveillance activities. The Commission operates an extensive large trader reporting system through which it collects information about traders who control significant futures positions from commodity exchanges, futures commission merchants (FCMs), foreign brokers who carry futures accounts, and individual traders. The various exchanges employ widely differing market surveillance practices and, according to a recent staff review, in some cases, the exchanges apparently collect little data on individual traders' positions for routine use in their surveillance efforts.

As a result of the overlapping responsibility of the Commission and the exchanges described above, some

duplication of effort exists. Additionally, since large trader data, which the Commission considers essential to preventing and detecting price manipulations and other market disturbances, is generally not equally available to the exchanges and the Commission, it may be difficult for the exchanges to fully discharge their market surveillance obligations. If the Commission does not act, these problems are unlikely to be resolved. In order to reduce duplication of effort and to enable the exchanges to discharge their self-regulatory responsibilities, the Commission is considering a general proposal that would require exchanges to collect, process, and forward to the Commission in machine readable form information similar to that which the Commission currently collects under existing regulations from FCMs and brokers. If adopted, this rulemaking approach would improve the market surveillance capability of the exchanges and thus enable the Commission to move toward an oversight, rather than regulatory role.

Alternatives Under Consideration

As described above, the Commission is considering whether, as self-regulatory entities, commodities exchanges should be primarily responsible for collecting and processing large-trader data. It has requested public comments on this question and will determine, after studying those comments, whether to publish specific rulemaking proposals to implement this approach.

Shifting primary responsibility for this activity to the exchanges would have several advantages. It would provide the exchanges with the information that is essential to maintaining an effective exchange market surveillance program; it would transfer significant responsibility from Government to the private sector; it would reduce some duplicative reporting burdens now imposed on the FCM community; and it would transfer a substantial portion of the cost of market surveillance to entities that are the direct beneficiaries of effective self-regulation—namely the exchanges, their members, and customers. This innovative compliance reform would reduce government costs as well. The most significant disadvantage to this approach is that, absent coordination by the exchanges, a reduction in reporting burdens may not be achieved.

Alternatively, the Commission is considering whether it would be feasible for the exchanges or a newly created self-regulatory organization to maintain a joint reporting system. This would

have all of the advantages of the approach described above and would eliminate the possibility that different exchanges might impose duplicative or inconsistent reporting requirements. The disadvantage of this approach is that it could delay, complicate, or (because of start-up costs associated with creating a new self-regulatory organization) render more expensive the transfer of primary responsibility from the Commission to the exchanges.

Summary of Benefits

Sectors Affected: Commodity exchanges; futures commission merchants; foreign brokers; the CFTC; and all market users.

These proposals would directly benefit commodity exchanges by enhancing their surveillance capability and by lessening the degree of Government involvement in their operations. They would also benefit FCMs and foreign brokers by eliminating the need for them to report certain information both to the Commission and some commodity exchanges, as they are required to do under existing Commission and exchange rules. Moreover, the CFTC would save time and money if proposals which shifted the primary burden of data collection to the exchanges were adopted.

Less directly but equally importantly, all market users would benefit from the exchanges' improved surveillance capacity and ability to prevent certain market disruptions.

Summary of Costs

Sectors Affected: Commodity exchanges; futures commission merchants; and foreign brokers.

Commodity exchanges which are currently collecting and maintaining less comprehensive data than would be required under these proposals are likely to experience increased operating costs. Additionally, unless a joint or coordinated reporting program is developed by the exchanges, futures commission merchants and foreign brokers in some instances might incur the cost of complying with duplicative reporting requirements. It is unlikely, however, that their reporting costs under the new system would exceed present reporting costs once the reporting system has been shifted fully from the Commission to the exchanges.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

Comment Period Expires—November 25, 1980.

Staff review of comments and formulation of recommendation to Commission expected to be completed by February 15, 1981.

Regulatory Analysis—the CFTC, as an independent agency, is not required to prepare a Regulatory Analysis as it is defined under E.O. 12044.

However, the CFTC prepares much of the same information in its NPRMs and final rules.

Available Documents

NPRM—45 FR 57141, August 27, 1980.

Public comments, contact Jane Stuckey at address below.

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CFTC**Proposed Rules Concerning Foreign Brokers and Traders (17 CFR 21.03*)****Legal Authority**

Commodity Exchange Act, §§4g, 4i, 5, 5a, and 8a, 7 U.S.C. §§6g, 6i, 7, 7a, and 12a.

Reason for Including This Entry

The Commodity Futures Trading Commission (CFTC) thinks this rule is important because it will facilitate the Commission's ability to obtain timely information concerning foreign traders. We expect that, if adopted, the rule could substantially improve our market surveillance capability.

Statement of Problem

In recent years, foreign participation in the United States futures markets has become increasingly significant. Although little statistical information is available, it appears that foreign participation may account for 25 percent or more of the activity in some commodities. By engaging in futures trading in the United States, foreigners, like domestic market participants, become subject to the regulatory scheme set forth in the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.*, and the Commission's regulations thereunder. One aspect of this scheme requires the Commission to perform intensive market surveillance, which involves collecting

reports from and communicating with both domestic and foreign market participants.

The CFTC is considering proposed rules which would make domestic futures commission merchants (FCMs) who are registered with the Commission primarily responsible for ensuring the availability of information needed by the Commission about the foreign brokers and traders whose futures trading accounts they carry. The reason for this action is that, at present, the Commission receives less timely, less complete, and less verifiable information from some foreign brokers and traders than it generally receives from their domestic counterparts, about the size of accounts and the identity of the persons for whose benefit the accounts were established. The Commission has encountered difficulties and delays in trying to identify and communicate with these foreign entities, in part because of foreign secrecy laws and legal restrictions in some countries on direct communications between foreign governments and their citizens. There is apparent widespread noncompliance by foreign brokers and traders with CFTC reporting requirements and it is difficult for the Commission to take effective enforcement action against them. As the markets regulated by the Commission have become increasingly international in character, the need for us to address these problems has become more important. If the Agency does not take any action, its market surveillance program will be hampered, and it will be difficult for the Commission to detect and take action to prevent price manipulations, corners, and other market disruptions.

Alternatives Under Consideration

The proposed rules would require domestic futures commission merchants who are registered with the Commission and who carry accounts for foreign persons to obtain a list of the persons for whose benefit the accounts were established. In our NPRM (45 FR 31733, May 14, 1980), we requested comments on whether that information should be maintained routinely, or acquired only when the Commission specifically requests it. Routine maintenance of the information might be more effective for our market surveillance program but acquisition of the information only as needed would be less burdensome for futures commission merchants and foreign brokers and traders.

Summary of Benefits

Sectors Affected: All sectors of the U.S. commodity futures markets,

including farmers and other producers, processors, manufacturers, commercial users, and consumers of commodities, and persons speculating in the futures markets; and CFTC.

If the CFTC adopts the proposed rule, the information available to the Agency about the size of positions held by foreigners and the identity of the persons who are the true owners of the positions will increase. The accounts of foreign persons who refuse to provide requested information will be liquidated. This should provide an incentive for greater compliance with our reporting requirements by foreigners. The availability of more complete market information will promote fair dealing and integrity in the markets and improve the CFTC's ability to detect and take action to prevent price manipulations, corners, and other market disruptions. All market users will benefit from more honest markets. The CFTC will benefit from being able to shift the burden from Government to industry for obtaining this information.

Summary of Costs

Sectors Affected: Registered domestic futures commission merchants; and foreign brokers and traders who participate through domestic agents in the U.S. futures market.

The proposed regulation could impose some administrative costs on registered futures commission merchants in the United States who would be responsible for obtaining required information about foreigners whose accounts they carry. Additionally, if futures commission merchants are required to liquidate customers' accounts to comply with the rule, they may experience some loss of foreign business.

Related Regulations and Actions

Internal: On April 1, 1980, CFTC voted to adopt final rules which would require foreign brokers and traders to have an agent for service or delivery of Commission communications. ("Designation of a Futures Commission Merchant to be the Agent of Foreign Brokers, Customers of Foreign Brokers and Foreign Traders," 17 CFR 15.05).

External: None.

Active Government Collaboration

None.

Timetable

Regulatory Analysis—the CFTC, as an independent agency, is not required to prepare a Regulatory Analysis as it is defined under E.O. 12044. However, the CFTC prepares much of the same information in its NPRMs and final rules.

Final Rule—November 1980.

Available Documents

NPRM—45 FR 31733, May 14, 1980.

"Futures Commission Merchants—Duties Concerning Accounts Carried For Foreign Brokers And Traders."

"Rules Concerning Foreign Brokers And Traders," Memorandum of the Office of the General Counsel, April 1, 1980.

Both the above documents are available by mail at no cost from the Office of the Secretariat, CFTC, 2033 K Street, N.W., Room 806, Washington, DC 20581.

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CFTC

Review of Guideline No. 1—Criteria for Determining Whether a Board of Trade Meets the Economic Purpose and Public Interest Tests for Contract Market Designation (17 CFR Part 5)

Legal Authority

Commodity Exchange Act, §§ 5, 5a, 6, and 8a, 7 U.S.C. §§ 7, 7a, 8, and 12.

Reason for Including This Entry

The Commodity Futures Trading Commission (CFTC) Guideline No. 1 sets forth the criteria that a board of trade must meet to become and to continue to be a market for a particular commodity futures contract. The CFTC includes this entry because clarification concerning these criteria could have a significant effect on the futures contracts traded on boards of trade.

Statement of Problem

The Commodity Exchange Act requires a board of trade (commodity exchange) seeking to become a market for a particular commodity futures contract to show CFTC that trading in the contract would not be contrary to the public interest. Guideline No. 1 (40 FR 25849, June 19, 1975), sets forth the criteria a contract market must meet in making such a showing. It indicates that the public interest test includes an "economic purpose" test and "to meet the 'economic purpose' test a board of trade is expected to establish that something more than occasional use of the contract for hedging (a method of protecting against price fluctuations) or price basing exists, or can reasonably be

expected to exist." It also requires a demonstration, based on the individual terms and conditions of the contract, that the contract will result in adequate deliverable supplies. Further, the guideline requires an affirmation that transactions for future delivery in the commodity will not be contrary to the public interest.

The public interest, hedging, and price-basing standards, as presently contained in Guideline No. 1, are very general. It has been the Commission's experience, in reviewing applications for initial contract market designation, that boards of trade have not uniformly met their statutory burden of demonstrating that their proposed contract markets may reasonably be expected to serve an economic purpose and are not contrary to the public interest. Furthermore, these applications have not consistently shown compliance with all other applicable requirements. As a result, the Commission has expended much time and effort in soliciting additional information from boards of trade and others. There have been concomitant delays in review. Additionally, the Commission is concerned about problems which could result when a previously designated contract becomes completely inactive or otherwise stops serving an economic purpose. The Commission estimates that more than 50 contracts may fall into this category. Further, the Commission is concerned with low volume or lightly traded contracts. The Commission estimates that at least ten to thirteen contracts will fall into this category. In such cases the Commission believes there is increased potential for price manipulation and other market distortions.

The existence of a particular futures market which does not meet a public interest standard could have an adverse impact on markets for the underlying and related commodities, to the detriment of farmers and other producers, processors, fabricators, commercial users, and consumers of the commodity, as well as members of the public who buy and sell futures contracts. Trading in a contract for which an adequate deliverable supply does not exist, for example, could result in price distortion.

The recent enormous growth of the futures markets and the development of futures contracts in many new commodities make this issue particularly important at the present time. At the end of fiscal 1979, U.S. futures exchanges were offering 119 different futures contracts in 59 commodities. There were 3,000

commodity exchange members, more than 300 futures commission merchants, about 37,000 commission registered futures industry salespeople, and 1,660 commodity trading advisors and commodity pool operators. Futures trading in Government securities, which was just beginning in 1975 when Guideline No. 1 was promulgated, has become increasingly significant. The market for Treasury bonds for example, increased from about 3,000 open contracts in 1977 to more than 65,000 in 1979.

If the Agency does not act, it will be difficult for exchanges to be on notice concerning what showing is required by a board of trade seeking designation as a contract market and what standards should be applied for continuation of such designation.

Alternatives Under Consideration

The Commission is considering several alternatives which will be published for public comment in November 1980. For futures contracts which we have not yet approved (designated) for trading, the Commission has proposed specific requirements which are intended to clarify the present economic purpose test a board of trade must meet in its application for designation. One approach the Commission has suggested is that a board of trade which seeks designation for a contract which is similar to one already traded by another exchange be required to describe the particular terms or conditions of the proposed contract or the exchange's institutional features which make it reasonable to expect that the proposed contract will meet the standards of the economic purpose test.

The Commission is also considering adopting a requirement which will clarify that a board of trade which is seeking designation as a new contract market first must demonstrate the adequacy of its rule enforcement and surveillance programs for its existing contracts. This proposal reflects the Commission's view that it would be contrary to the public interest to designate boards of trade as additional contract markets, where information available to the Commission demonstrates significant deficiencies in enforcement programs for currently designated markets.

The Commission is also considering adoption of a rule which would clarify the requirement that boards of trade that seek designation as contract markets for contracts based on securities issued or guaranteed by the U.S. Government must make certain additional showings. For these contracts, boards of trade would have to

provide information to the Commission about the effects, if any, such contracts would have on the debt financing requirements of the U.S. Government and the continued efficiency and integrity of the underlying market for Government securities. The Commission is required, under § 2(a)(B)(ii) of the Commodity Exchange Act, to consider these factors for contracts based on Government securities.

With respect to the showing that boards of trade should be required to make to justify continued designation as a contract market, the CFTC has considered several alternatives. Although we initially considered requiring boards of trade to provide us with quantitative standards for assessing whether a contract continues to serve an economic purpose, we have determined not to propose such a rule at this time. Instead, we have proposed a rule which would require boards of trade to evaluate trading in low volume contracts and document that they are used for price basing and commercial participation. Additionally, contract markets would be required to evaluate the extent to which commercial participants used the contract for hedging, a method of protecting against price fluctuations. We believe this approach is more desirable and that it will facilitate our determination whether a contract continues to serve an economic purpose, without imposing excessive paperwork burdens on boards of trade.

Additionally, the Commission has proposed for comment a rule preventing an exchange from adding new delivery months to a dormant contract without Commission approval. A related rule proposal would require a contract market to file periodic reports with the Commission containing volume and trading information concerning low volume contracts. This approach would provide the Commission with an indication of whether a contract continues to serve an economic purpose. It would also be useful to boards of trade in fulfilling their self-regulatory responsibilities concerning low volume contracts.

Summary of Benefits

Sectors Affected: All sectors of commodity futures markets, including farmers and other producers, processors, manufacturers, commercial users, and consumers of commodities; persons who speculate in the futures markets; boards of trade; and CFTC.

Codification and clarification of current Commission requirements concerning the economic purpose and

public interest tests would help assure the proper functioning of the futures and cash markets by reducing the potential for market abuses such as price manipulations, which would result from initial or continuing designation of a contract which does not serve an economic purpose. It would also decrease the likelihood of adverse effects on other sectors of the economy which would result from artificial commodities prices, and enhance the protections provided to market participants by boards of trade. In addition, clarifying the standards to be applied could make the Commission contract review process more efficient. A reduction of the uncertainty about what the Commission considers an adequate showing that a board of trade meets the requirements for contract market designation should also reduce the effort and resources which boards of trade expend in new contract preparation. Finally, to the extent that the submission of more detailed, relevant information facilitates Agency action, the Commission could realize some savings in staff resources.

Summary of Costs

Sectors Affected: Boards of trade.

Boards of trade could incur some additional administrative costs if the submissions accompanying their applications for contract market designation are required to be more detailed. They also would be subject to a new reporting requirement with respect to low volume contracts, which would raise their compliance costs.

Related Regulations and Actions

Internal: On October 21, 1980, CFTC voted to publish for comment proposed rules clarifying the economic and public interest requirements for contract rules market designation, and proposed rules relating to dormant and low volume contracts.

External: None.

Active Government Collaboration

None.

Timetable

Public Comment Period—Comment on NPRM expires February 1, 1981.

Staff Analysis—February 1981.

Final Rule—Mid-1981.

Regulatory Analysis—CFTC, an independent regulatory agency, does not prepare Regulatory Analyses as defined under E.O. 12044.

Available Documents

NPRM—(45 FR 73504, November 5, 1980), "Economic and Public Interest

Requirements for Contract Market Designation."

NPRM—(45 FR 73499, November 5, 1980), "Dormant and Low Volume Contracts."

"Possible Revisions to Commission Guideline No. 1," Staff discussion paper, April 22, 1980.

The above documents are available by mail at no charge from the Office of the Secretariat, CFTC, 2033 K Street, N.W., Washington, DC 20581.

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FEDERAL DEPOSIT INSURANCE CORPORATION

Applications, Requests, Submittals, and Notices of Acquisition of Control (12 CFR Part 303*) and Disclosure of Information (12 CFR Part 309*)

Legal Authority

Federal Deposit Insurance Act of 1950, as amended, 12 U.S.C. §§ 1815, 1816, 1818, 1819, 1828, and 1829.

Reason for Including This Entry

These proposals are important because (1) they concern an issue of public interest (access to public information) and (2) they enhance Agency productivity by reducing operations costs to the Federal Deposit Insurance Corporation (FDIC) without causing adverse effects.

Statement of Problem

FDIC regulations require that the FDIC create a separate public file, containing most kinds of applications that banks submit to the FDIC, and make that file available for public review. The FDIC found that very few members of the public request to review the public files. Thus, most public files on pending applications are prepared but are never used. The FDIC has proposed to amend its regulations to eliminate the separate public files. Under the proposal, the FDIC would retain the information it currently keeps in the public files as a part of the complete application file. The FDIC would make the public file information available within one day after a member of the public requests to see the file.

Alternatives Under Consideration

Alternatives the FDIC considered other than this proposal were (A)

leaving the regulation unchanged or (B) eliminating the public file and requiring requesters to use the procedures of the Freedom of Information Act ("FOIA," 5 U.S.C. § 552) to obtain information relating to pending applications. The FDIC determined that retention of the public file, though providing easy access, results in large expenditure of FDIC resources with little corresponding gain. Eliminating the public file with no provision for expedited access would unreasonably burden any individual who has a need to review a file. The proposed regulation would provide access to more information than the minimum that FOIA requires the FDIC to release, would permit a request for access to be made either in writing or orally, and would require the material to be made available no later than one working day after receipt of the request. The proposal would relieve FDIC regional staff of the administrative burdens and costs involved in maintaining the current public file, but would not adversely affect the public's interest.

Summary of Benefits

Sectors Affected: FDIC; insured State nonmember banks; and the general public.

The amendments FDIC proposes effect only its own internal regulation. The amendments impose no reporting, recordkeeping, or other requirements on insured State nonmember banks as a result of the proposed changes. The benefit to the FDIC in reduced administrative costs would be shared indirectly by the banks the FDIC supervises because FDIC operating costs affect assessments for deposit insurance paid by banks to the FDIC.

Summary of Costs

Sectors Affected: None.

The FDIC thinks this proposal would reduce FDIC administrative burden while meeting public needs, and that no sector would bear any costs.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

Final Rule—Pending deliberation at end of comment period (October 20, 1980), the FDIC expects to publish the Final Rule in December 1980.

Regulatory Analysis—None.

Public Hearings—None.

Available Documents

NPRM—45 FR 52819, August 8, 1980. The public comment period ended on October 20, 1980. The comments and copies of the NPRM are available at the Information Office, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, DC 20429.

Agency Contact

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FDIC

Securities of Insured State Nonmember Banks (12 CFR Part 335*)

Legal Authority

The Securities Exchange Act of 1934, § 12(i), 15 U.S.C. § 78(i).

Reason for Including This Entry

The proposed rule is important because it will affect (1) the disclosure requirements of more than 400 insured nonmember banks and (2) the investing public.

Statement of Problem

Section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. § 78(i)) (Act) required that the Federal Deposit Insurance Corporation (FDIC) (1) adopt regulations substantially similar to the Securities and Exchange Commission's (SEC) rules on registration requirements for securities or (2) publish findings and detailed reasons that such conforming regulations are neither necessary nor appropriate in the public interest or for the protection of investors. The FDIC proposes to amend its Part 335 to make it conform to rules adopted by the SEC in June 1979 and to make it more understandable.

The FDIC's proposed rule covers the following topics and problems: (1) A safe harbor for projections—The FDIC rule exempts banks from liability imposed by other regulations if the banks properly use future earnings projections and other forward looking information in filings and annual stockholder reports. If, for an example, a bank makes projections about earnings prospects but does not meet those projections because of unforeseen circumstances, then the bank will not be subject to liability for making false or misleading disclosures, unless the projections were prepared without a

reasonable basis or were disclosed other than in good faith. In the past, banks have been reluctant to give the investing public any information that lacked a purely historical basis. Consequently, banks have withheld or not developed relevant information, about projections, for example. The FDIC's proposed rule enables investors to obtain more information without subjecting banks to additional liability.

(2) Reporting by foreign banks—The FDIC rule exempts foreign banks that have insured branches from certain general financial reporting requirements and provides a reporting form to accompany applicable required reports. Basically, this rule provides a cover page to which a subject bank must attach any report that is public or is required to be filed in the bank's country of domicile, incorporation, or origin. The purpose of the rule is to make available in the United States any information that is available in the foreign country, without unduly burdening the reporting bank. One possible disadvantage of the rule is that substitutes the foreign country's reporting format and content standards for those of the United States.

(3) Corporate governance—The FDIC rule gives shareholders of subject banks more flexibility in voting; for example, it allows shareholders to withhold proxies from a candidate for the board of directors. In the past, shareholders have been able to vote against specific issues, such as a merger or an acquisition, but in voting for directors, they have had to vote for the whole slate or withhold their proxies. Under the proposed FDIC rule, shareholders can withhold their proxies from specific directors. Thus, shareholders have more freedom of choice and, at least theoretically, individual directors will be more responsive to shareholders.

(4) Dividend reinvestment plans—The FDIC rule creates an exemption from the reporting and liability provisions previously applicable to bank insiders (directors, principal officers, and 10 percent-or-more shareholders) who participate in banks' dividend reinvestment plans. Section 16(a) of the Act requires that insiders report their stock ownership and update their § 16(a) reports. Section 16(b) prohibits insiders from making short-swing profits (profits from buying or selling the corporate stock within any six-month period) on the assumption that short-swing profits are made by trading based upon inside, not public, information. Ordinarily, insiders are liable to the corporation for any short-swing profits they make on its stock. However, because dividend reinvestment plans,

which automatically purchase stock for participants, are managed by a trustee and are not controlled by insiders, there is no reason to treat insiders less favorably than other participants in such plans. Accordingly, the SEC rule and the FDIC proposed rule exempt insiders' participation in dividend reinvestment plans from § 16(b) reporting and liability provisions.

(5) Tender offers—The FDIC rule clarifies and makes more comprehensive the existing rules about tender offers. A tender offer involves the solicitation of an offer to sell securities.

(6) Reforming Part 335—The FDIC rule reorders and rennumbers paragraphs and sections of Part 335 of the FDIC rules and regulations to make Part 335 easier to read.

Alternatives Under Consideration

As stated above, § 12(i) of the Act requires that the FDIC adopt regulations that conform to the SEC's rules on registration requirements for securities, unless the FDIC finds that the implementation of substantially similar regulations with respect to insured banks are not necessary or appropriate in the public interest or for the protection of investors. Because the FDIC considers these SEC rules to be appropriate, it has no discretion to consider alternatives. The FDIC has not proposed regulations conforming to SEC amendments on (1) issuer tender offers and (2) "going private" transactions (those that have a reasonable likelihood of relieving banks of disclosure requirements of the Securities Exchange Act of 1934). The FDIC's detailed findings and reasons for considering the alternatives of not conforming with these SEC rules are published in the *Federal Register* of September 19, 1980 (45 FR 62480).

These FDIC proposals are not suited to a flexible regulatory approach (small bank/large bank) because shareholders and investors in small banks need the same quality of information that their counterparts in large banks need. The Office of Small Business Policy at the Securities and Exchange Commission is studying the feasibility of reducing reporting requirements for small issuers.

Summary of Benefits

Sectors Affected: More than 400 insured nonmember banks (including state-chartered banks and some foreign banks that have insured branches in the U.S.); and the investing public.

Banks and the public will derive both quantitative and qualitative benefits from the proposed amendments. The proposed rule on safe harbors for

projections saves banks the costs of liability they might incur if reasonably based projections are not met. Qualitatively, investors will benefit by having access to more forward looking information.

The proposed exemption for foreign banks saves those banks the costs of creating additional kinds of general financial reports.

The proposed rule on corporate governance benefits shareholders primarily qualitatively by giving them greater opportunities to exercise their right of suffrage and to obtain information about matters on which they vote.

As stated above, insiders will benefit from the proposed exemption for dividend reinvestment plans, because they will not have the uncertainty of having to pay to the corporation any short-swing profits earned by those plans. The proposed rule should result in quantitative and qualitative cost-savings to insiders without imposing additional costs on any affected sector.

The banks and the public will benefit from the proposed rule on tender offers because they will save the considerable costs of litigating uncertainties about the proper procedures for making tender offers. Management may thereby conserve corporate resources otherwise used to combat tender offers.

As mentioned earlier, another qualitative benefit of the proposal is that it will change the format of Part 335, making the part easier to read and understand.

Summary of Costs

Sectors Affected: More than 400 insured nonmember banks (including State-chartered banks and some foreign banks that have branches in the U.S.).

As explained above, the amendments are required by statute because they are either necessary or appropriate. Consequently, cost-benefit analysis does not determine the design of the regulations the FDIC adopts, for they must be substantially similar to those issued by the SEC. The quantitative and qualitative cost savings are summarized above under Summary of Benefits.

As for banks' compliance costs such as recordkeeping, administrative overhead, and reporting, the safe harbor rule creates none beyond the administrative costs of understanding a new rule.

The International Banking Act of 1978 amended the term "insured bank" in § 3(h) of the Federal Deposit Insurance Act to include a foreign bank having an insured branch in the United States. Because of the operation of § 12(i) of the

Securities Exchange Act of 1934, such foreign banks have for the first time become subject to Part 335. The proposed rule on foreign bank reporting is a low cost alternative for complying with the statutes because it requires only submission of information already required by the foreign bank's home country and provides cover sheet forms for those reports.

The proposed rule on corporate governance will require some changes in proxy cards and, therefore, the costs of printing new proxy card forms.

In conclusion, the amendments primarily impose requirements of public disclosure and filings with the FDIC. In its NPRM, the FDIC has specifically requested comments about any increases in costs that the amendments impose, particularly projected start-up costs and continuing costs.

Related Regulations and Actions

Internal: None.

External: SEC regulations pursuant to § 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. § 78(i)). The Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System are also subject to § 12(i) of the Act and are therefore proposing substantially similar regulations.

Active Government Collaboration

The FDIC has coordinated its efforts to comply with § 12(i) with the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System.

Timetable

Final Rule—Spring 1981 (pending deliberation at the end of the comment period and final coordination with the other affected Federal financial supervisory agencies. The comment period ended on November 18, 1980).
Regulatory Analysis—None.
Public Hearings—None.

Available Documents

NPRM—45 FR 62480, September 19, 1980.

Copies of the notice are available at the Information Office, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, DC 20429.

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FEDERAL HOME LOAN BANK BOARD**Regulations To Implement the Depository Institutions Deregulation and Monetary Control Act of 1980 (12 CFR Subchapters A*, B*, C*, and D*)****Legal Authority**

The Depository Institutions Deregulation and Monetary Control Act of 1980, P.L. 96-221, 94 Stat. 161.

Reason for Including This Entry

The FHLBB includes these proposed regulations because they implement the Depository Institutions Deregulation and Monetary Control Act of 1980, which provides precedent-setting ways in which savings and loan institutions can compete more effectively in the financial marketplace and offer a wider array of services to their communities.

Statement of Problem

The Depository Institutions Deregulation and Monetary Control Act of 1980 (the Act), signed by President Carter on March 31, 1980, made numerous significant changes in the Nation's financial community. For savings and loan associations, the Act greatly broadened the scope of investment and lending powers under which they operate so that they may compete more effectively in the financial marketplace. The Act authorized savings and loans to offer their communities a wider array of financial services in order to carry out this purpose. Among them are Negotiable Order of Withdrawal (NOW) accounts, interest bearing check-like accounts, credit cards, consumer loans, trust services, and remote service units for customers' convenience in conducting financial transactions.

Other changes brought about by the Act affect all financial institutions' competitive positions and daily operations. All depository institutions covered by the Act are required to hold reserves against their transaction and other accounts as defined by the Board of Governors of the Federal Reserve System. The interest rate differential on savings accounts and deposits will be phased out over the next 6 years. The Act preempts state usury laws for residential real estate, mobile home, and other loans. This means lenders can charge a higher interest rate than that allowed by state laws.

In order to implement the changes made by the Act, each Federal financial regulatory agency is in the process of adopting appropriate regulations (see "Related Regulations and Actions"). The Bank Board has adopted final regulations under the Act as listed

below. Proposed regulations upon which the Board will act over the next few months are described in the body of this entry.

- Mobile Home Loan Consumer Protection Provisions (45 FR 46339, July 10, 1980, and 45 FR 50556, July 30, 1980).
- Conversion from State Stock to Federal Stock Charter (45 FR 57114, August 22, 1980).
- Resolution Regarding Regulatory Simplification (45 FR 63135, September 23, 1980).
- Reserve Requirements (45 FR 50797, July 31, 1980).
- Credit Cards, Travelers' Convenience Withdrawals, and Third-Party Payments (45 FR 46338, July 10, 1980).
- Service Corporation Investment Authority (45 FR 56029, August 22, 1980).
- Mutual Fund Investment Counting Toward Liquidity (45 FR 57113, August 27, 1980).
- Amendments Relating to Federal Mutual Savings Banks (45 FR 56031, August 22, 1980).
- Collection, Processing and Settlement of Payment Instruments (45 FR 64161, September 29, 1980).
- NOW Accounts (45 FR 66781, October 3, 1980).

While the primary function of the savings and loan industry—to provide home financing—will remain unchanged, the Act's provisions will increase the ability of savings and loans to compete for deposits by allowing them to engage in activities traditionally reserved for commercial banks. The following list briefly describes the proposed regulations upon which the Board will act in the next few months to complete implementation of the Act's provisions affecting savings and loans.

(1) Investment in Consumer Loans, Commercial Paper, and Corporate Debt Securities—The Board, by Resolution No. 80-468 of July 31, 1980 (45 FR 52177, August 6, 1980), proposed to implement § 401 of Title IV of the Act which authorizes Federally-chartered savings and loan associations and mutual savings banks, subject to a 20-percent-of-assets limitation, to invest in, sell, or hold consumer loans, commercial paper and corporate debt securities as defined and approved by the Board. These regulations would also implement the Federal Financial Institutions Examination Council's recommended "Uniform Policy for Classification of Consumer Installment Credit Based on Delinquency Status." The public comment period closed October 6, 1980.

(2) Revision of Real Estate Lending Regulations—By Resolution No. 80-469 of July 31, 1980 (45 FR 52173, August 6, 1980), the Board proposed regulations to

implement, in part, Title IV of the Act, which comprehensively revised and expanded the investment authority of Federal savings and loan associations in the area of real-estate-related loans. Major changes would include the lifting of restrictions on location of security property, lien priority and dollar amount of loans. The public comment period closed October 6, 1980.

(3) Trust Powers Authorization—By Resolution No. 80-528 of August 21, 1980 (45 FR 57728, August 29, 1980), the Board proposed a new Part 550 to implement the recent statutory authorization for the granting of trust powers to Federal savings and loan associations. Section 403 of the Act amends the Home Owners' Loan Act of 1933 ("HOLA") (12 U.S.C. § 1464), by adding a new subsection (n) to 5 of that law. The Board proposed regulations which implement its authority "to grant by special permit to an association applying therefore the right to act as trustee, executor, administrator, guardian, or in any other fiduciary capacity in which state banks, trust companies, or other corporations which come into competition with associations are permitted to act under the laws of the State in which the association is located." The Board also proposed regulations regarding the proper exercise of Federal association trust powers. The public comment period closed October 21, 1980.

(4) Reserve Accounts—By Resolution No. 80-445 of July 24, 1980 (45 FR 50718, July 31, 1980), the Board proposed the following changes to the net worth requirements imposed on institutions which have accounts insured by the Federal Savings and Loan Insurance Corporation: (1) replace the current net worth requirement of five percent of insurable accounts plus five percent of secured borrowings with a requirement of four percent of liabilities, (2) eliminate the Asset Composition and Net Worth Index plus the five percent of secured borrowings requirement, (3) provide for up to a ten percent reduction in the otherwise applicable net worth requirement proportionate to the amount of long-term debt, flexible-yield mortgages and short-term liquid assets held, and (4) provide a limited waiver of the net worth and reserve requirements for institutions that sell residential mortgages carrying an interest rate of seven and one-half percent or less. The Board also proposed to reduce the current statutory reserve requirement from an amount equal to five percent of insured accounts to an amount equal to four percent of insured accounts. The

public comment period closed September 29, 1980.

(5) **Mutual Capital Certificates**—By Resolution No. 80-490 of August 15, 1980 (45 FR 55720, August 21, 1980), the Board proposed to amend its regulations for Federal mutual associations, Federally-insured state-chartered mutual institutions, and Federal mutual savings banks to provide procedures for the issuance of mutual capital certificates. In summary, the proposed regulations set forth: (1) procedures for application to the Board for approval of the issuance of mutual capital certificates; (2) procedures for insured mutual association membership approval of the authorization for issuance of mutual capital certificates; (3) proxy solicitation and issuer disclosure requirements; (4) pre-approved charter amendments for Federal mutual associations and Federal mutual savings banks; and (5) permissible and mandatory legal attributes of mutual capital certificates issued pursuant to the Board's regulations. In addition, the proposed regulations provide that mutual capital certificates shall be deemed to constitute a part of an insured mutual association's statutory reserve and net worth accounts. The proposed regulations implement Title IV of the Act, providing for the creation and issuance of mutual capital certificates. The public comment period closed October 20, 1980.

Alternatives Under Consideration

Prior to implementation of final regulations, the Board issues regulatory proposals soliciting public comment regarding alternative approaches it may take to effect the purposes of the Act. Also, the Board may, where appropriate, discuss in these proposals the alternatives it has considered in developing the chosen approach. In other cases, where the Act is specific with regard to its implementation, there is very limited leeway in the regulatory alternatives open to the Board.

Summary of Benefits

Sectors Affected: Savings and loans, particularly those with Federal charters; savings and loan customers.

Implementation of the increased authorities provided by the Act will provide savings and loans with the means to compete more effectively with other financial institutions for deposits by offering an increased range of loan types and services to the public and by attracting new sources of capital investments.

Summary of Costs

Sectors Affected: Savings and loans, particularly those with Federal charters; savings and loan customers.

Costs associated with the proposed regulations vary for all affected sectors, and each proposal should therefore be read separately. For instance, costs associated with establishment by savings and loans of trust departments and consumer lending operations will differ in accordance with the scale of activity each institution decides to implement.

Related Regulations and Actions

Internal: Statutory changes affect existing regulations included in 12 CFR Subchapters A, B, C, and D.

External: Other provisions of the Act are being implemented by, or in conjunction with, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the National Credit Union Administration. Examples of such provisions are in the areas of reserves against transaction accounts, and clearing services to be provided by the Federal Reserve Banks and the Federal Home Loan Banks for NOW account drafts drawn on savings and loan deposits.

Active Government Collaboration

Under the Act, a six-member Depository Institutions Deregulation Committee has been established to promulgate regulations for setting rates on savings deposits. These members, who are the Secretary of the Treasury, the Comptroller of the Currency, and the Chairpersons of the Federal Reserve Board, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, and the National Credit Union Administration, also work together in implementing various other provisions of the Act.

Timetable

1. *Investment in Consumer Loans, Commercial Paper, and Corporate Debt Securities*
Final Rule—November 1980.
Regulatory Analysis—None.
2. *Revision of Real Estate Lending Regulations*
Final Rule—November 1980.
Regulatory Analysis—None.
3. *Trust Powers Authorization*
Final Rule—December 1980/January 1981.
Regulatory Analysis—None.
4. *Reserve Accounts*
Final Rule—November 1980.
Regulatory Analysis—None.
5. *Mutual Capital Certificates*

Final Rule—December 1980/January 1981.

Regulatory Analysis—None.

Available Documents

Copies of proposed rules, public comment letters, and final rules (listed in "Statement of Problem") are available at the Board's offices at 1700 G Street, N.W., Washington, DC 20552. The Board's Public Information Office, (202) 377-6934, or Office of Communications, (202) 377-6677, may be called for additional information.

Copies of transcripts of public meetings are available from the Office of the Secretary, Federal Home Loan Bank Board, at the same address.

Agency Contact

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FEDERAL RESERVE SYSTEM

Truth in Lending

Legal Authority

The Truth Lending Act, 15 U.S.C. § 1601, *et seq.*, as amended by The Depository Institutions Deregulation Act of 1980, Title VI, P.L. 96-221, 94 Stat. 191.

Reason for Including This Entry

The Federal Reserve Board (Board) includes this entry because it is of great public interest as it deals with disclosure of credit information to consumers.

Statement of Problem

The Board has statutory responsibility to implement the Truth in Lending Act. The Act requires that creditors provide uniform disclosure of the cost of credit to enhance consumers' abilities to choose among alternative financing arrangements (i.e., credit shopping). Congress originally passed the Act in 1968, and amended it in 1970, 1974, and 1976. In March 1980, Congress, realizing that the Act had become extremely complicated, substantially simplified it by reducing the number and complexity of the disclosures a creditor must provide consumers and requiring the Board to issue model disclosure forms.

At the end of April 1980, the Board proposed for public comment a complete revision of its Regulation Z (45 FR 29702, May 5, 1980) to implement the new Truth in Lending Simplification and Reform Act. Rulemaking continues, and the Board will issue a revised NPRM in December 1980. A final revised

Regulation Z must be adopted by the Board not later than April 1, 1981. Compliance with the new rules by those who extend credit will be optional until April 1982, after which they must comply.

The proposed revision of Regulation Z reflects not only the Truth in Lending Simplification and Reform Act, but also the work of the Board's staff and the staff of the Federal Reserve Bank of Atlanta as part of the Board's Regulatory Improvement project to examine and reevaluate all Federal Reserve regulations. The revised and simplified Regulation Z is the final phase of an effort that began 3 years ago with the Board's submission to the Congress of a proposal for simplifying the Truth in Lending Act.

Alternatives Under Consideration

While the Board had the option to incorporate the numerous statutory amendments into the existing regulation, it decided to completely revise the regulation, reorganizing its provisions so as to have a clearer and more understandable regulation.

The proposals would make several major changes in the regulation. The proposals would:

- Restructure the regulation's format to group together related provisions in separate subparts. Although that results in some duplication and therefore lengthening of the regulation, it means that the substantive rules for closed-end (for example, installment and mortgage) credit, open-end (for example, revolving credit, and personal property leases) are presented separately, eliminating the need to search through the regulation for the applicable provisions.

- Incorporate into the regulation the substance of many Board and staff interpretations and clarify several troublesome questions raised by court decisions, such as the identity of the creditor.

- Include model disclosure forms and language to enhance understanding and compliance and to provide a safe harbor from civil liability for those who make proper use of the models.

- Encourage early disclosure through the use of streamlined closed-end credit disclosures reflecting representative transactions. It is designed to provide consumers with a realistic opportunity for credit shopping. Public comments to date have opposed this proposal because both creditors and borrowers are afraid it would not offer adequate documentation.

- Eliminate some of the closed-end credit disclosures currently required for certain transactions, while permitting consumers to request an explanation of

how the credit proceeds were disbursed, if they desire.

- Require for the first time that closed-end credit disclosures be placed together and segregated from other contract provisions and any other Federal or State disclosures.

- Eliminate many of the current format requirements for open-end credit disclosures, thereby giving creditors more flexibility in designing their forms to convey necessary information more effectively.

- Conform the open-end credit disclosures to the requirements of Regulation E (Electronic Fund Transfers) wherever necessary and possible.

- Exempt from the right of rescission (i.e., consumers right to rescind provisions of a contract) advances made under an open-end credit account that is secured by the consumer's home.

In addition:

- Although, like the new statute, the Board's proposal do not materially change open-end credit disclosures, they clarify a number of points about those disclosures and ease several requirements regarding billing statements and error notices.

- The Board's proposals also provide that regulatory changes should occur only once a year, in October.

The proposals incorporate several requirements that are not expressly mandated by statute. The Board is interested in comments on the merits of including those requirements and on how they might be modified to further the purposes of the amended Truth in Lending Act. Examples of such provisions are:

- The proposals provide special rules for certain refinancings and assumptions of existing closed-end credit obligations as well as for demand obligations. It also requires advance notice of changes effecting open-end credit plans. In both instances, it generally follows the current regulation.

- The proposals would require an explanation of any variable rate feature in a consumer credit obligation.

We have sought public comment on whether this restructuring and inclusion of additional information will be helpful.

Summary of Benefits

Sectors Affected: All sectors of the economy that grant consumer credit, including banks, credit agencies, and retail establishments; and all consumers of credit.

The revised format and simpler language of Regulation Z should benefit creditors using the regulation because it will be easier to understand and therefore easier to comply with. Greater compliance will benefit consumers

through knowledge of the true costs of credit. Consumers should also benefit from the regulation's requirement that creditors must present their information in a very clear and straightforward manner. For example, creditors must highlight the Truth in Lending disclosures and provide simple definitions of required terms. The Board will provide model forms that illustrate effective communication with consumers. The Board designed these forms in part to help smaller creditors who have fewer administrative resources. If these forms are properly used, creditors will be in compliance with the regulations. While creditors, in printing these forms, will incur initial high costs, they will benefit over the long run because they will bear lower legal and administrative costs in complying with these regulations. Moreover, since proper use of the forms ensures compliance, both creditors and borrowers should benefit from a reduced need for litigation.

In addition to the benefits discussed above, many costs associated with Truth in Lending that have resulted from the frequent changes in regulation should be reduced because of the statutory provision that requires all regulatory changes to occur only in October of each year.

Summary of Costs

Sectors Affected: All sectors of the economy that grant consumer credit, including banks, credit agencies, and retail establishments; and all consumer of credit.

The adoption of the revised regulation will require virtually all creditors to revise their disclosure procedures, resulting in additional costs in computer programming and forms revision. However, the Board's provision of model forms should reduce the managerial and legal costs in designing disclosure forms.

Creditors may pass any costs through to consumers of credit.

Related Regulations and Actions

Internal: Electronic Transfers (12 CFR Part 1205).

External: None.

Active Government Collaboration

None.

Timetable

NPRM—December 1980.

Regulatory Analysis—Summary accompanies NPRM; full text available from Agency Contact listed below.

Public Comment—30 days following NPRM.

Board Decision—April 1, 1981.

Available Documents

NPRM—45 FR 29702, May 5, 1980.

Copies are also available from the Public Information Office of the Federal Reserve, 20th & Constitution Avenue, N.W., Washington, DC 20551.

Comments may be inspected at Room B-1122, at the above address.

Agency Contact

Maureen P. English and Ellen Maland,
Sections Chiefs

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SECURITIES AND EXCHANGE COMMISSION

Proposed Comprehensive Revision to System for Registration of Securities Offerings (17 CFR Part 239*)

Legal Authority

Securities Act of 1933, §§ 6, 7, 10, and 19(a), 15 U.S.C. § 77a *et seq.*

Reason for Including This Entry

The Securities and Exchange Commission (SEC) believes that these new registration forms are important because they will significantly revise the registration statements filed with the SEC under the federal securities acts when securities are offered to the public. The proposed revision potentially would affect approximately 9,000 public companies and other issuers.

Statement of Problem

The Securities Act of 1933 (Securities Act) requires companies which desire to offer securities to the public to file registration statements with the SEC. The Securities Exchange Act of 1934 (Exchange Act) requires companies with publicly traded securities to register with the SEC, to file annual and other periodic reports, and to register additional securities which they may wish to sell to the public. The SEC is proposing to revise its forms for registration statements to establish a single, integrated disclosure system which will permit most registered companies to comply simultaneously with the disclosure provisions of both Acts.

At present, the Securities Act and the Exchange Act have different disclosure requirements. The Securities Act requires that companies registering securities give detailed disclosure concerning their business and financial condition at the time that securities are

offered for public sale. Under the Exchange Act, companies whose shares are registered with the SEC, or which have previously sold shares to the public under the Securities Act, must file periodic reports containing detailed disclosure of their affairs. Often major portions of the disclosure required in Securities Act registration statements and in Exchange Act reports overlap to a great degree, but because of differences in the timing of the filings, the disclosure is not word-for-word the same.

In addition to filing registration statements and periodic reports with the SEC, many public companies prepare and deliver to shareholders informal annual reports, portions of which are required by various State laws and SEC rules. Again, the informal annual reports prepared by many public companies tend to contain information which duplicates some of the information contained in Securities Act registration statements in the Exchange Act reports. In the case of informal reports, however, the duplicated information tends to be delivered in a somewhat different format.

The problem faced by the SEC is to reduce or eliminate the duplicative reporting and to reduce thereby both the volume and the cost of the material which companies prepare. Concurrently, the SEC is seeking to maintain the quality of disclosure and to update disclosure obligations to eliminate outmoded or unnecessary requirements.

At least three significant factors suggest that the SEC should act at this time to combine or integrate disclosure under the Securities Act, the Exchange Act, and in informal shareholder reports. First, the report of the SEC's Advisory Committee on Corporate Disclosure, delivered to the SEC in November 1977, examined the possibility of combined reporting and indicated a significant and urgent need for integration. Second, an SEC examination of registration statements, Exchange Act reports, and informal shareholder reports indicates that over the years, the number of significant content differences may have diminished, thereby making an integrated system more feasible. Finally, as the volume of disclosure requirements has increased over the years, the cost to registrants and the burden upon the SEC staff has correspondingly increased. An integrated system will reduce the volume of disclosure documents, and correspondingly reduce both the costs and burdens to reporting companies.

If the SEC does not act now, companies will continue to bear unnecessary costs and burdens.

Additionally, from the SEC's point of view, over the past 10 years the SEC staff responsible for the review of filings has been gradually reduced, while the volume of disclosure has increased. At present staffing levels, if the SEC did not eliminate the need to review essentially duplicative filings, the staff would increasingly dilute its ability to review effectively the content and quality of filed documents.

Alternatives Under Consideration

(A) With respect to Exchange Act reports, information is classified into two general categories relating to either an Exchange Act filing or to an informal shareholder report. Companies could avoid duplicating information already contained in their shareholder reports by incorporating such information by reference into their Exchange Act filings. The content of public company registration statements filed under the Securities Act in connection with the sale of additional securities would depend upon the availability of previously documented information in the marketplace or from other sources outside of the Exchange Act. Thus, the SEC would employ a three-tier scheme to classify companies desiring to sell securities. First, companies with widely traded securities could incorporate most disclosure by reference to Exchange Act filings. Second, companies with no record of financial difficulty and 3 years of adequate Exchange Act filings could incorporate some disclosure by reference to Exchange Act filings and to informal reports to shareholders, but the SEC would require the delivery of one or more of those filings or reports to prospective purchasers of securities. Finally, the SEC would require all other companies to prepare extensive registration statements which would involve some duplication of information previously filed in Exchange Act reports. The SEC staff believes this alternative would result in both a more rational organization of information concerning public companies, and the development of informal reports to shareholders, which could serve as the primary source of descriptive and financial information concerning those companies. Reports to the SEC would supplement, but not duplicate, the informal shareholder report. Although the SEC staff does not expect a reduction in the size or information content in the informal shareholder report, it would expect dramatic decreases in both size and content of formal SEC filings.

(B) This alternative would involve the opportunity for integration of disclosure between Exchange Act filings and informal shareholder reports as outlined

in the first alternative, but would keep these filings and reports separate from registration statements. The SEC would make no effort to integrate further these filings and reports with registration statements filed under the Securities Act. Because some duplication of prior disclosure would be required where a registrant decided to sell additional securities to the public, this approach would result in less cost savings to public companies. On the other hand, this approach would accept the existing different structures and, particularly, the existing different liability provisions of the two Acts, thereby avoiding potentially difficult legal issues which arise when a document prepared for filing under the Exchange Act is subsequently used to satisfy a requirement under the Securities Act.

(C) This alternative would integrate disclosure under the official Exchange Act filings and Securities Act registration statements, but would leave informal reports to shareholders outside of the formal disclosure system. This would continue much of the present disclosure system. The SEC would require companies to make changes in Exchange Act reports to make them more readable so that they could be used more effectively in connection with Securities Act registration statements. This approach would maximize a company's ability to communicate in informal reports, but probably would not result in a significant reduction in the volume of disclosure documents.

The SEC currently is pursuing Alternative A, which maximizes the potential for reductions in duplicative disclosure without doing away with informal reports. The SEC believes that informal shareholder reports are currently the most effective means of communicating with shareholders. Alternative C does not appear to be attractive because the advantage in terms of the readability of the informal shareholder report would be lost in the Securities Act registration context, as such reports would not be incorporated by reference into Securities Act registration statements. Finally, the SEC is not pursuing Alternative B because reductions in duplicative disclosures would be minimal and in any event, the SEC may have to address the liability problems which Alternative B avoids.

Summary of Benefits

Sectors Affected: Companies having a class of securities registered under § 12 or with a reporting obligation under § 15(d) of the Exchange Act, or which offer securities subject to registration under the Securities Act; shareholders of such companies;

persons wishing to purchase shares of such companies; other persons who rely upon or use information filed by such companies with the SEC, or who rely upon or use information contained in informal shareholder reports; and the SEC.

The SEC believes, on the basis of its own informal estimates, that the proposed amendments would reduce the total volume of Exchange Act periodic reports filed by a particular registered company from 0 to 50 percent, and of registration statements filed under the Securities Act from 0 to 75 percent. Approximately 30,000 Exchange Act reports and 2,500 Securities Act registration statements were filed in 1979. The greater reductions would relate to filings by companies with widely traded securities, since those companies incur the largest costs. In this regard, the SEC's Advisory Committee on Corporate Disclosure reported in 1977 that large companies incurred costs averaging more than \$45,000 per year to prepare SEC-mandated annual reports. We believe that at least some direct cost savings would be realized by nearly all companies having a reporting or filing obligation.

The SEC does not believe that there will be any measurable cost savings to shareholders, potential investors, and other users of financial reports and filed information. However, to the extent that corporate costs are reduced, companies may pass on some of the cost reduction to one or more of these interests.

Because of the reduction in the total volume and complexity of disclosure documents, registered companies and issuers of securities should realize reduced legal and other professional costs, printing and duplicating charges, and mailing costs. Although the SEC cannot measure the amount of these savings, because of numerous internal variables and the lack of a reporting system, the SEC believes them to be significant. Additionally, the overall volume reductions should decrease the administrative burden to the SEC staff, increase processing speed, improve communications with shareholders and investors, and result in some improved access to capital markets.

Shareholders, investors, and other users of filed information should also benefit because companies will produce more readable and communicative disclosure information.

Summary of Costs

Sectors Affected: Companies having a class of securities registered under § 12 or with a reporting obligation under § 15(d) of the Exchange Act, or which offer securities subject to

registration under the Securities Act; shareholders of such companies; persons wishing to purchase shares of such companies; and other persons who rely upon or use information filed by such companies with the SEC, or who rely upon or use information contained in informal shareholder reports.

The SEC does not believe that any significant costs would be incurred by any affected sector as a result of the adoption of these proposals, although in some circumstances a limited number of companies filing reports and issuing shares could incur greater auditing costs.

Additionally, if the SEC mandates incorporation by reference into Securities Act registration statements of information in informal reports to shareholders, it may eliminate some flexibility in the manner in which companies disseminate information to shareholders. The imposition of Securities Act liability on portions of these documents could also inhibit their present communicative style, even though the SEC expects the overall communicability of the portions which do become formal filings and reports to improve.

Shareholders, investors, and other users of filed documents will receive slightly less information as a result of these proposals; and to the extent that legal liability makes portions less readable, these sectors could also be detrimentally affected. The SEC believes, however, that these costs will be more than offset by the greater readability of the overall information package.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

Regulatory Analysis—SEC, as an independent agency, is not required to prepare a Regulatory Analysis as defined under E.O. 12044.

Public Hearings—None planned.

Public Comment Period—September 2, 1980 to January 15, 1981.

Final Rule—Spring 1981.

Available Documents

"Proposed Comprehensive Revision to System for Registration of Securities Offerings," Securities Act of 1933 Release No. 6235, 45 FR 63693, September 25, 1980.

"Amendments to Annual Report Form, Related Forms, Rules and Guides; Integration of Securities Acts Disclosure

Systems," Securities Act of 1933 Release No. 6231, 45 FR 63630, September 25, 1980.

"Business Combination Transactions—New Short Form for Registration and Related Rule Amendments," Securities Act of 1933 Release No. 6232, 45 FR 63647, September 25, 1980.

"General Revision of Regulation S-X," Securities Act of 1933 Release No. 6233, 45 FR 63660, September 25, 1980.

"Uniform Instructions as to Financial Statements—Regulation S-X, Securities Act of 1933 Release No. 6234, 45 FR 63682, September 25, 1980.

"Proposed Revision of Form 10-Q, Quarterly Report," Securities Act of 1933 Release No. 6236, 45 FR 63724, September 25, 1980.

These releases are available from Publications, Securities and Exchange Commission, 500 N. Capitol Street, Washington, DC 20549, (202) 272-2960. 20 SEC Docket 1059-1239.

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SEC

Proposed Rules Exempting the Acquisition and Ownership of Interests in Power Generation and Transmission Companies and Exempting Certain Non-Utility Subsidiaries of Registered Holding Companies (17 CFR Part 250)

Legal Authority

Public Utility Holding Company Act of 1935, §§ 3(d) and 20(a), 15 U.S.C. § 79a *et seq.*

Reason for Including This Entry

The Securities and Exchange Commission (SEC) has proposed three rules that would provide exemptions from the application of certain provisions of the Public Utility Holding Company Act of 1935. The rules will benefit only a limited number of electric or gas utilities and other energy related companies, but the exemptions may greatly facilitate the organization of joint venture companies to build and operate assets costing in the billions of dollars. The SEC has proposed the rule in furtherance of the Administration's policy to eliminate unnecessary and duplicative Federal regulation of energy

projects which are in the national interest.

Statement of Problem

The risks and costs of building and owning large new electric generating plants or other energy assets (e.g., gas transmission pipelines, coal gasification plants, liquefied natural gas facilities) have caused utilities to turn increasingly to forms of joint ownership. For many reasons, including limited liability and the ability to finance the new facility on a "project financing" basis—that is, through the issuance of long-term debt or other securities by the project entity rather than by the individual owners—joint ventures typically take the form of subsidiary corporations or general partnerships in which the sponsoring utilities own voting securities or other voting interests.

The acquisition of 5 percent or more of the voting securities of a power generation or transmission company (which is an "electric utility" for purposes of the Holding Company Act) may require SEC approval under §§ 9(a)(2) and 10 even though the acquiring company is not otherwise subject to regulation under the Holding Company Act. Furthermore, because the acquiring company becomes a "holding company" when it acquires 10 percent or more of the voting securities of such an entity, the Holding Company Act imposes upon the acquiring company certain standards and requirements which have little, if any, bearing upon its status as an operating electric utility company. In most cases, this kind of acquisition does not involve significant issues under §§ 9 and 10, and the acquiring company is usually able to qualify for an exemption as a "holding company" under § 3(a). Nevertheless, each such acquisition requires SEC approval on a case-by-case basis, and the SEC also must review the parent company's status as an "exempt" holding company.

The SEC believes that case-by-case consideration of these arrangements, as required by §§ 3, 9, and 10 of the Act, is not necessary in the public interest and very often is duplicative of other State and Federal regulatory actions.

Accordingly, the SEC is proposing Rules 14 and 15 to exempt such acquisitions from §§ 9 and 10, if several conditions are met, including the receipt of other State and Federal regulatory approvals of various transactions involved in these arrangements. The rules provide that the SEC will not challenge the status of an acquiring company as an "exempt" holding company if the acquisition meets all of

the requirements for an exempt acquisition.

Joint ventures to build and own major non-utility facilities involve a slightly different problem under the Holding Company Act. Rule 16 addresses this problem. The owners of a non-utility subsidiary company are not "holding companies" under the Holding Company Act, but if any company owning 10 percent or more of the voting securities of such a company is already a registered holding company, the subsidiary is a "subsidiary company" and is regulated for all purposes as such; that is, all financing proposals and other related transactions of the "subsidiary company" must be approved by the SEC, even though that entity is owned largely by companies which are not, themselves, subject to any regulation under the Act.

Several non-utility joint venture projects have been announced, including a major new gas transmission system and a coal gasification plant. These projects involve the participation of a registered holding company with other energy concerns which are not subject to the Holding Company Act. The energy concerns not subject to the Act have conditioned their participation in these projects upon the SEC exempting the project entity from regulation as a "subsidiary company." Rule 16 responds to this need. Without the exemption, all financing actions by the project entity would require SEC approval. The SEC believes that this regulatory burden is unnecessary and undesirable in cases in which the joint venture company is substantially owned by companies which are not subject to the Holding Company Act, and the SEC is capable of monitoring the involvement of registered holding companies in, and all financial commitments made to, these ventures through its jurisdiction over acquisitions generally under §§ 9 and 10 of the Act.

Alternatives Under Consideration

Rules 14, 15, and 16 are exemptions from regulatory requirements, although not from the standards of the Holding Company Act. The alternative would be for the SEC to deny the exemptions, in which case interested concerns would have to comply with all of the procedural requirements, including a hearing, if needed, in order to participate in the joint venture undertakings referred to above. The regulatory burden imposed by the Holding Company Act may discourage this kind of joint undertaking.

The SEC has concluded that transactions such as those contemplated by the rules generally do not involve the abuses against which the Act is

directed; rather, they are undertaken most often to secure a source of supply for existing utility customers and thus do not involve the growth or extension or unlimited diversification of holding company systems. Furthermore, such transactions are regulated by other State and Federal regulatory authorities in most respects, so that the SEC's function is largely duplicative. Also, in many cases, these transactions are undertaken pursuant to specific Federal loan or loan guarantee programs which are intended to promote the development of new or alternative energy resources, including cogeneration, synthetic fuel production, and geothermal power, so that the objectives and financial integrity of the programs are already approved, as being in the public interest, under entirely independent statutory standards. Therefore, the SEC prefers to provide exemptions by rule, rather than by reviewing the merits of each case.

Summary of Benefits

Sectors Affected: Rules 14 and 15—Electric utility companies which are not members of registered holding company systems, and rural electric cooperative associations. Rule 16—Registered holding companies and their subsidiaries, gas utilities and other energy related establishments, such as natural gas transmission companies; the SEC; and consumers of electric, gas, and other energy sources.

The SEC believes, on the basis of its own informal estimates, that the proposed rules would eliminate the need for the Agency to process anywhere from 10 to 30 separate applications each year for express approval of qualifying projects. The savings would result from elimination of regulatory expense and delay. The rules should reduce the administrative burden to the SEC staff and provide greater flexibility to utilities and other energy concerns in structuring joint venture projects.

The SEC does not believe that the proposed rules will result in any measurable cost savings to shareholders or potential investors. Utility customers and other consumers may benefit to the extent that the proposed rules enable energy concerns to take advantage of lower capital costs associated with long-term financing, but the SEC has no way of measuring any such savings.

Summary of Costs

Sectors Affected: None.

The SEC does not believe that any sector would incur significant costs as a result of the adoption of the proposed rules. The rules do not impose any new liabilities in connection with the

transactions contemplated, or any other restrictions or conditions that the SEC would not normally impose in approving these transactions on a case-by-case basis.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

Regulatory Analysis—SEC, as an independent agency, is not required to prepare a Regulatory Analysis as defined under E.O. 12044.

Public Hearing—None planned.

Final Rules—Winter 1980.

Final Rules Effective—Upon publication in the *Federal Register*.

Available Documents

"Certain Acquisitions by Electric Utility Companies," Public Utility Holding Company Act Release No. 21661, 45 FR 49954, July 28, 1980.

"Proposed Rule to Exempt Certain Non-Utility Subsidiaries under the Public Utility Holding Company Act of 1935," Public Utility Holding Company Act Release No. 21685, 45 FR 57436, August 28, 1980.

These releases are available from Publications, Securities and Exchange Commission, 500 N. Capitol Street, Washington, DC 20549, (202) 272-2960.

In addition, public comments on the proposed rules, contained in files No. S-7-845 and S-7-847, may be reviewed at the SEC Public Reference Room (Room 6101), 1100 L Street, N.W., Washington, DC.

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CHAPTER 4—HEALTH AND SAFETY

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DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

Proposed Polychlorinated Biphenyls (PCBs) Regulation—Existing Equipment (9 CFR Parts 308* and 381*; 7 CFR Part 2859*)

Legal Authority

Federal Meat Inspection Act, 21 U.S.C. § 601 *et seq.*; Poultry Products Inspection Act, 21 U.S.C. § 454 *et seq.*; Egg Products Inspection Act, 21 U.S.C. §§ 1031 *et seq.*

Reason for Including This Entry

The Food Safety and Quality Service (FSQS) protects the public health by ensuring the safety of meat, poultry, and egg products. Since 1971, there have been several incidents of PCB contamination of human food supplies, including meat, poultry, and eggs. FSQS considers environmental contamination of food a serious public health hazard and is seeking to prevent such contamination from recurring.

Statement of Problem

PCBs are part of a broad group of organic chemicals known as chlorinated hydrocarbons. PCBs were produced in the United States from 1929 to 1977. (Virtually all production then came to a halt in anticipation of a prohibition placed by the Environmental Protection Agency on the manufacture of PCBs in July 1979.) Because of their almost complete resistance to fire and explosion, their high dielectric performance (as nonconductors of electric current), and their excellent heat transfer properties, PCBs were primarily used in electrical transformers, capacitors, heat-transfer systems, and hydraulic systems. (PCBs in meat, poultry, and egg products plants are currently primarily confined to transformers and capacitors.)

Research and studies conducted during the past 15 years have demonstrated numerous adverse health effects associated with various levels of exposure to PCBs. Direct human exposure has been associated with such symptoms as skin disorders, digestive disturbances, jaundice, throat and respiratory irritations, swelling of joints, and severe headaches. Tests on laboratory animals have shown that PCBs can cause reproductive failures, gastric disorders, and skin lesions. In previous rulemaking procedures, the Environmental Protection Agency has reported that PCBs appear to have caused malignant and benign tumors in rats and mice in several experiments.

During the same 15 years, there have been several incidents where human

food supplies have been contaminated by PCBs. Recent history suggests that one PCB contamination incident per year is likely. These cases of environmental contamination have resulted either from accidental spills, improper disposal techniques, unintentional misuses of PCB-contaminated materials and equipment, and PCB liquid leaking from industrial equipment.

The levels of PCB exposure that produced the above-described adverse health effects exceed the levels of PCBs found at any time in the United States food supply. However, the effects of PCB contamination are cumulative. PCBs are extremely stable and chemically persistent, and thus do not readily metabolize in living organisms. Rather, PCBs accumulate in the fatty tissues of humans and animals, and, as a result, there is ample evidence indicating that prolonged exposure to PCBs poses a potential health risk.

The FSQS intends to establish a requirement that no equipment or machinery, other than capacitors containing less than 3 pounds of PCB liquid, and no separately maintained liquids in the plants and establishments inspected by the U.S. Department of Agriculture (USDA), could contain PCBs in excess of 50 parts per million (ppm). This would mean that firms with existing equipment containing excessive PCBs would have to replace the equipment or remove the PCBs from that equipment. The purpose of this proposed action is to reduce the likelihood of an incident of environmental contamination and thereby reduce the overall threat to public health.

In a related action, the FSQS finalized, on October 17, 1980 (45 FR 68914), a regulation that prohibits the introduction of any new or replacement equipment or machinery in any meat, poultry, or egg products establishment that it regulates, if that machinery or equipment contains PCBs in excess of 50 ppm in the liquid medium.

Alternatives Under Consideration

(A) Take no action on the use of existing equipment or machinery or separately maintained liquids containing PCBs in plants under FSQS jurisdiction. These plants could still use existing equipment containing PCBs and continue to service that equipment as needed with separately maintained liquids containing PCBs. This alternative would not significantly reduce the likelihood of contamination of the food supply from equipment leaking PCBs for many years. As stated above, the FSQS has already published a regulation that prohibits the introduction of any new or

replacement equipment or machinery containing liquid PCBs on the premises of the meat, poultry, and egg products plants under FSQS jurisdiction. Because transformers and capacitors have a product life of 25 to 40 years, existing equipment will continue to present a potential public health hazard for many years to come if no action is taken to affect the rate of replacement.

(B) Conduct an extensive information and education campaign aimed at the managers of all plants under FSQS jurisdiction. This campaign can stress the seriousness of PCB contamination and the unnecessary liability associated with maintaining equipment containing PCBs when replacement equipment is available. Under this alternative, equipment containing PCBs could be used at the discretion of individual plant managers. Managers would, however, be making informed choices. Some PCBs could contaminate the food supply. The FSQS has already implemented this option to a certain degree. As part of the information and education campaign, the USDA has distributed the booklet "Polychlorinated Biphenyls: An Alert for Food and Feed Facilities" to FSQS field personnel, plant managers, State program directors, and other parties including various trade associations. FSQS has also developed film and slide materials for presentation to inspection personnel who are located in plants. These materials include explanations of what residues are, why they are dangerous, and how they get into the food supply. The FSQS has also participated in two seminars conducted with States in cooperation with the Interagency Regulatory Liaison Group (IRLG). Finally, the FSQS has developed in draft form a public information campaign that addresses environmental contaminants in general, and the Agency's Contamination Response System (CRS), the operational system to control the spread of contamination after initial detection.

(C) Ban any PCB-containing equipment, other than capacitors containing less than 3 pounds of PCB liquid, and any liquid PCBs from all meat, poultry, or egg processing establishments under FSQS jurisdiction. This alternative would completely eliminate one source of potential contamination of the food supply. Possible problems associated with this option include the availability of approved PCB incinerators, the risks involved with removing or refilling existing equipment, and the availability of replacement equipment.

Summary of Benefits

Sectors Affected: Manufacturing of meat, poultry, and egg products; consumers of these products; and FSQS.

Manufacturers benefit from reducing the likelihood of PCB contamination of the food supply. Food contaminated with PCBs cannot be sold for human consumption, and must be destroyed at the producer's expense. We estimate the costs of condemned products in a major 1979 PCB contamination incident centered in Montana to be almost \$3 million, not including disposal costs. Also, in checking for PCBs in meat, poultry, and egg products, products are detained by FSQS until the results of laboratory analysis (carried out by FSQS) are available if the Agency has reason to suspect that the products may be contaminated. Thus, the producer's sales are postponed. If we reduce the number of contamination incidents, we reduce this burden on producers.

FSQS also benefits through cost avoidance. When alerted to a PCB contamination incident, the Agency must spend its resources tracking and testing products to ensure they are not contaminated. We estimate that the costs to FSQS during the 1979 PCB incident were almost \$1 million.

When the likelihood of PCB contamination is reduced, consumers have greater confidence in the products they buy. (Greater confidence may also lead to increased purchases—a benefit for producer.) Consumers also benefit from avoidance of potential adverse health effects. The levels of PCB exposure that produced the above-described adverse health effects exceed the levels of PCBs found at any time in the United States food supply. However, the effects of PCB contamination are cumulative. PCBs are extremely stable and chemically persistent, and thus do not readily metabolize in living organisms. Rather, PCBs accumulate in the fatty tissues of humans and animals, and, as a result, there is ample evidence indicating that prolonged exposure to PCBs poses a potential health risk. There are, therefore, public health costs associated with PCB contamination which might result from not regulating the use of PCB-containing equipment. These potential public health costs are unquantifiable.

The total value of all benefits is difficult to quantify. While the total costs of the 1979 incident originating in Montana may never be known, it has been estimated by FSQS that the costs to FSQS and industry to locate, remove, and destroy the contaminated products ran into several millions of dollars.

These costs may be only a small portion of the total costs. Other costs include lost profits, costs of litigation, and costs to other Federal and State agencies.

Summary of Costs

Sectors Affected: Manufacturing of meat, poultry, and egg products; consumers of these products; and FSQS.

Alternative (C) would be the most costly of the three alternatives. To provide cost information, the FSQS conducted a census of federally inspected meat and poultry plants to obtain data on the number of existing transformers/capacitors in plants under FSQS jurisdiction, the size of these units, and the number of these units that may contain PCBs.

As of August 1980, FSQS has collected and analyzed the data from over 7,200 federally inspected meat and poultry plants—at a cost of approximately 3 staff-years. The Agency's Official Establishment Inventory contains approximately 7,400 federally inspected meat and poultry plants. There are probably a few transformers/capacitors in the approximately 5,000 small State inspected meat and poultry plants and a few units in the approximately 120 federally inspected egg processing plants, but the data base now assembled includes reported data from most of the plants that would be affected by the proposed regulation. The data indicate that less than 2,000 out of the total of approximately 12,500 federally and State inspected plants would be affected. The inventory data can be summarized as follows:

Approximately 400 plants have a total of approximately 7,000 capacitors that have a combined total Kilo Volt Ampere Reactive (KVAR) of 180,000 KVAR. Approximately 1,100 plants have a total of approximately 6,000 transformers that have a combined total Kilo Volt Ampere (KVA) of 2 million KVA. Based on these data, we have estimated that all plants under FSQS jurisdiction have from 7,000 to 10,000 capacitors and from 6,000 to 6,500 transformers.

The data show that approximately 500 (300,000 KVA) of the transformers are units manufactured with concentrated PCB fluid as the coolant. These units would probably have to be replaced. There are 5,500 to 6,000 mineral oil transformers. Limited data show that from one-third to 40 percent of these units are contaminated with PCBs above 50 ppm. Owners of these units could probably drain, flush, and refill them. We estimate that there are 2,500 of these contaminated transformers (700,000 KVA). At present, the replacement cost for a transformer is approximately \$12

per Kilo Volt Ampere (KVA) and for a capacitor approximately \$10 per Kilo Volt Ampere Reactive (KVAR). We estimate that installation costs are equal to the costs of the equipment. We also estimate that the costs to drain, flush, and refill transformers are equal to the costs of the equipment. Capacitors must be replaced since they cannot be refilled.

Using these figures, the 7,000 capacitors would cost \$1.8 million to purchase and another \$1.8 million to install. Replacing 500 PCB-transformers would cost \$3.6 million to purchase and another \$3.6 million to install. Draining, flushing, and refilling 2,500 contaminated mineral oil transformers would cost an estimated \$8.4 million (\$12 per KVA).

The total estimated cost for replacing or refilling existing PCB equipment in 1980 is therefore approximately \$20 million. This is a one-time, out-of-pocket cost to the owners of the equipment. The meat, poultry, and egg processing industries own all of the capacitors and most of the PCB transformers. Utilities own a large number of the PCB-contaminated transformers currently installed on the premises of federally inspected plants. The utilities could remove or drain and refill their units. We estimate that the costs to remove the equipment are about the same as the costs to drain and refill the equipment. The meat, poultry, and egg products industries could pass their costs onto consumers in terms of retail price increases.

The enforcement of Alternative (C) places an additional burden on USDA inspectors or compliance personnel. The Agency must monitor the removal or replacement of existing equipment. However, the Agency already has full-time inspectors at all the larger federally inspected plants where most of the affected equipment is located. Smaller plants are inspected on a patrol basis. We therefore estimate that requiring existing in-plant inspectors to monitor the installation, refilling, or removal of equipment will not be a major effort.

Under Alternative (B), the Agency could conduct an extensive information and education campaign aimed at those plant managers who must make decisions on whether or not to use electrical equipment containing PCBs. Product liability should influence these decisions. Concern for the public health should also influence these decisions.

Under Alternative (A), the Agency would not, at the current time, take any action with respect to the use of equipment containing PCBs on the premises of any plant under FSQS

jurisdiction. With no action, there are no direct costs.

Alternatives (A) and (B) also carry the public health costs associated with PCB contamination incidents which might result from no regulation of the PCB-containing equipment. We do not know the size of such costs, but they could potentially equal several million dollars per incident.

Related Regulations and Actions

Internal: Final Regulation—Prohibition of All New and Replacement Equipment and Machinery Containing Liquid Polychlorinated Biphenyls (PCBs)—45 FR 68914, October 17, 1980.

External: Food and Drug Administration: Proposed Regulation—Current Good Manufacturing Practice Relating to Poisonous and Deleterious Substances in Food, Feed, and Food-Packaging Materials Plants—45 FR 30984, May 9, 1980.

Environmental Protection Agency: Proposed Regulation—Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Proposed Restrictions on Use at Agricultural Pesticide and Fertilizer Facilities—45 FR 30989, May 9, 1980.

Active Government Collaboration

PCBs are a toxic substance identified for regulatory coordination by the Toxic Substances Work Group of the Interagency Regulatory Liaison Group (IRLG). During the development stage of this regulation, FSQS consulted representatives of the Environmental Protection Agency, the Food and Drug Administration, the Consumer Product Safety Commission, and the Occupational Safety and Health Administration. On May 9, 1980, the FSQS proposed joint regulations at 45 FR 30980 with the Food and Drug Administration and the Environmental Protection Agency that would implement Alternative (C) above for all food and food chemical (agricultural pesticide and fertilizer) plants.

Timetable

Public Comment Period—Closes December 4, 1980.
Final Rule—Summer 1981.
Regulatory Analysis—Final Impact Statement will be completed by June 1980 as part of the rulemaking process.

Available Documents

Public Comment—Comments available upon request. Docket number FR Doc. 80-13740.
Draft Impact Analysis—Prohibition of PCB-Containing Equipment or

Machinery and Liquid Polychlorinated Biphenyls (PCBs) in Federally Inspected Meat Plants, Poultry Product Plants, and Egg Product Plants—April 11, 1980.

Proposed Regulation—Prohibition of PCB-Containing Equipment or Machinery and Liquid Polychlorinated Biphenyls (PCBs) in Federally Inspected Meat Establishments, Poultry Product Establishments, and Egg Product Plants—45 FR 30980, May 9, 1980.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Abbreviated New Drug Applications for New Drugs Approved After October 10, 1962, for Human Use (21 CFR Part 314*)

Legal Authority

Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 321(p), 352, 355, and 371(a).

Reason for Including This Entry

The Food and Drug Administration (FDA) includes this entry because it represents a change in Federal policy with significant implications for competition for prices in prescription drug markets.

Statement of Problem

Under § 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 355), no person (sponsor) may market a new drug (for human use) in interstate commerce without prior approval from FDA in the form of an approved new drug application (NDA). An approved NDA permits marketing of the product only under the conditions approved and only by the person named in the NDA. Other persons who want to manufacture and market the same product must have their own approved NDAs.

The statute also requires that an NDA contain the information essential for FDA to determine whether a new drug is approvable. FDA regulations (21 CFR Part 314) explain the application requirements in detail. These regulations also describe the contents of abbreviated new drug applications (ANDAs) (21 CFR 314.1(f)). An ANDA must contain all the information essential for FDA to determine the

approvability of a drug product that is identical or closely related to a drug product that has previously satisfied the NDA requirements. However, an ANDA need not contain evidence of safety and effectiveness of the drug product because that information already is available to FDA. (Safety and effectiveness evidence, gathered from studies of the drug when used in animals and humans, account for the largest costs to a firm that seeks approval of an NDA.)

On October 10, 1962, the Federal Food, Drug, and Cosmetic Act was amended to require that new drugs be proven to be effective as well as safe before marketing. Prior to that date, the statute required only evidence of safety. FDA regulations (21 CFR Part 314) and policy now in effect make many drug products first approved for marketing prior to October 10, 1962 eligible for approval on the basis of an ANDA rather than a NDA. The proposed rule would extend the applicability of ANDAs to certain drug products introduced after this date.

It is not in the public interest for FDA to continue to require full NDAs for all new drug products introduced into commerce after October 10, 1962. Because FDA now requires an NDA for all post-1962 drug products, prospective marketers of a "duplicate" drug product (i.e., a product identical in active ingredient(s), dosage form and strength, and route of administration to one that has an approved NDA) either must conduct their own clinical studies or they must reference published studies to support claims of safety and effectiveness that already had been documented in the NDA of the first sponsor ("pioneer") of the drug. If published studies do not exist, prospective marketers of duplicate drug products cannot obtain NDA approval without incurring the costs of clinical trials. This situation acts as a barrier to the marketing of duplicate drug products, thus dampening competition and causing higher drug prices. Moreover, conducting duplicate clinical studies for the purpose of obtaining safety and effectiveness data consumes clinical resources unnecessarily and causes FDA to use its resources unnecessarily in reviewing the reports of the studies.

FDA will attempt, in its draft Regulatory Analysis, to estimate the effects of its policy on competition, drug prices, and use of resources.

Alternatives Under Consideration

The agency is considering several alternatives in developing its proposed rule:

(A) No change. The Agency does not permit ANDAs for duplicates of drug products that FDA approved after October 10, 1962. However, FDA does allow the approval of "paper" NDAs, i.e., NDAs that rely on published reports of clinical studies showing safety and effectiveness. Thus, a paper NDA policy achieves many of the same objectives sought by an extended ANDA policy. However, this informal paper NDA policy is necessarily restricted to drugs for which adequate published literature is available, and published data are known to exist for less than one-third of the pioneer drugs whose patents have expired. No change in policy would perpetuate the existing restrictions on competition in prescription drug markets. Such a policy benefits sponsors of pioneer drug products to the extent that market exclusivity sometimes continues beyond the patent expiration.

(B) Full extension of ANDA applicability. This alternative would allow ANDAs for appropriate drugs introduced after October 10, 1962, regardless of date of approval. Although this alternative would maximize the potential competition in prescription drugs by reducing the costs associated with marketing new drugs, ANDA activity would be constrained (just as NDA activity is now constrained) by the existence of patents in many cases, particularly for more recently approved pioneer drugs. (Although NDA and ANDA approvals are independent of patent issues, marketers of duplicate drugs risk civil suits of patent infringement when a patent has not expired.)

(C) Limited extension of ANDA applicability. The Agency could limit the extension of applicability of the post 1962 ANDA policy in two general ways. First, FDA would extend ANDA availability to duplicates or drugs very similar to "older" drugs introduced during a fixed period of time (e.g., 1962-1967). Second, FDA could extend ANDA availability initially to duplicates of drugs introduced before a certain date (e.g., December 31, 1970) and provide annually for successive 1-year extensions, thereby increasing each year the total number of products for which FDA would accept ANDAs. This alternative is a means to balance the tradeoff to society. On the one hand, society benefits from enhanced competition (i.e., the expectation of subsequent lower prices on generic drugs to consumers). On the other hand, society derives benefits from a policy that fosters research and development of previously unmarketed drugs, which in turn is dependent on adequate

revenues that result from an exclusive marketing period for a producer of drugs.

Summary of Benefits

Sectors Affected: Consumers of prescription drugs (pharmaceutical preparations); taxpayers; manufacturers of generic drugs (generic pharmaceutical preparations); certain drug test populations; and Federal and State drug purchasing programs.

The proposal would be favorable to increased competition in post-1962 drugs, potentially leading to reduced prices in many cases through increased direct competition or through anticipatory price decreases to reduce the threat of such competition. Consumers would benefit from savings on purchases of affected drugs, as would taxpayers through Federal and State drug purchasing and reimbursement programs.

Prospective marketers (e.g., generic drug manufacturers) could submit ANDAs for approval without conducting new safety and effectiveness testing. Subsequently, they would benefit from the profit they receive after their drug products are marketed. Additionally, the proposal would eliminate the use of human subjects and clinical investigators in unnecessary testing of drugs with known characteristics. FDA resources would not be used unnecessarily for the review of duplicative research.

Summary Costs

Sectors Affected: Manufacturers of drugs (pharmaceutical preparations); consumers; and FDA.

None of the alternatives impose any direct costs on the economy. Extension of the ANDA policy would reduce from present levels the requirements on firms who must now submit an NDA to obtain approval to market duplicate drug products. Nevertheless, insofar as an action (i.e., any alternative except no change) results in activities that promote the concomitant goals of increased competition and reduced societal expenditures for prescription drugs, certain costs may be incurred by various sectors of the economy.

Drug manufacturers as a group would incur costs for the preparation of increased numbers of ANDAs. The costs per ANDA is modest as compared to costs of an NDA. However, as the proposed rule became fully implemented, the number of ANDAs submitted could generate aggregate application costs that exceed those costs that likely would have been

generated by the submission of a smaller number of duplicate NDAs.

Drug firms that develop innovative drug products could receive less revenues from such products as a consequence of increased competition in certain markets. Conceivably, the impact on total revenues of such firms or on the expected revenues from newly developed drugs could affect unfavorably the economic capacity or incentives for drug development. Should this be translated into a reduction in the future rate of drug development, it could represent a future indirect cost to consumers in the form of delayed introduction of new or improved therapies.

Processing the increased volume of ANDAs could produce a net increase in FDA's total drug approval workload and resource requirements.

Related Regulations and Actions

Internal: 21 CFR Part 314.

External: None.

Active Government Collaboration

None.

Timetable

NPRM—January 1981.

Public Comment Period—To be determined.

Public Hearing(s)—To be determined.

Final Rule—To be determined.

Draft Regulatory Analysis—Available at time of NPRM.

Available Documents

None.

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HHS-FDA

Chemical Compounds Used in Food-Producing Animals; Criteria and Procedures for Evaluating Assays for Carcinogenic Residues (21 CFR Parts 70*, 500*, 514*, and 571*)

Legal Authority

Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 409(c)(3)(A), 512(d)(1)(H), 706(b)(5)(B), and 701(a).

Reason for Including This Entry

The Food and Drug Administration (FDA) includes this entry because the

proposed rule could have an annual effect of \$100 million or more on the economy.

Statement of Problem

The Federal Food, Drug, and Cosmetic Act (§§ 409(c)(3)(A), 512(d)(1)(H), and 706(b)(5)(B)) allows the FDA Commissioner to approve a carcinogenic new animal drug, food additive, or color additive for use in food-producing animals, provided the compound will not adversely affect the animals for which it is intended, and no residue of such compound will be found (by methods of examination prescribed or approved by FDA regulation) in any edible portion of such animals after slaughter, or in any food yielded by or derived from the living animals. This exception to the general statutory prohibition (Delaney clause) against the addition of carcinogenic substances to the food supply has come to be known as the "DES Proviso."

The enactment, in 1962, of the DES Proviso to the Delaney clause of the Act has been a source of continuing controversy stemming from the phrase "no residue will be found." This phrase can be interpreted either in an absolute or an operational sense. There are two important facts bearing on this controversy. First, the introduction of a compound, whether or not carcinogenic, into the system of a food-producing animal is likely to leave in the animal's edible tissues minute residues that cannot be detected or measured by any known or likely to be developed method of analysis. Second, for any test developed to measure the concentration of a residue in an edible tissue, there is some level of residue in that tissue below which the test will show no interpretable result. In view of these facts, the Commissioner could not permit any use of carcinogenic drugs in animals if he adopted the absolute interpretation of the phrase "no residue will be found." The effect of that interpretation would be to deny the DES Proviso any effect whatever. The second possible interpretation is to assume that Congress intended to require the Commissioner to give an operational and more realistic definition to the phrase "no residue" and to proceed accordingly.

As a matter of policy, to implement the DES Proviso, the Agency has adopted the second interpretation as a more likely reflection of congressional intent, for two reasons. First, by its nature, the absolute interpretation constitutes a negation of the DES Proviso to the Delaney clause and leads to the conclusion that the Congress introduced the Proviso intending it to

have no effect. Second, the critical term in the Proviso is that no residue will be "found"—not that none will exist. Therefore, application of the Delaney clause to animal drugs, food additives, or color additives hinges on the availability of appropriate analytical methods that determine whether residues are present in edible tissues from animals treated with carcinogenic drugs. Although the Food and Drug Administration (FDA) has adopted the second interpretation, it has never specified by regulation the criteria and procedures that apply in the process of approving methods for analyzing animal tissues for carcinogenic residues. The proposed regulation specifies such criteria and procedures.

Alternatives Under Consideration

The Agency considered several alternatives in developing its proposed rule published in the *Federal Register* of March 20, 1979 (44 FR 17070).

(A) No change. The current method for approval of suspect carcinogenic compounds for veterinary use relies on an FDA/sponsor-negotiated ("sponsor" means the person seeking approval to market the compound) residue level, which attempts to weigh in balance the known or perceived human risk of cancer, the availability of a reliable regulatory assay method, and the agricultural importance of the compound. The Agency has rejected this approach, because it is difficult to administer fairly and rationally.

(B) State-of-the-art. This alternative, which the Agency has considered inappropriate from the start, defines the phrase "no residue" as the lowest limit of measurement or detection by the best analytical method that is capable of measuring the residues of a compound in edible tissues of animals, and that is available at the time FDA approves the compound. The Agency has rejected this approach. Different compounds have differing carcinogenic potencies. These differences are not in any way related to the availability or lack of sensitive analytical methods that measure residues in edible tissues from food-producing animals that have been administered a compound. For instance, depending on the relative sensitivity of the available methods, this alternative would permit public consumption of meat contaminated with very large levels of some potentially carcinogenic residues while it would require that meat be essentially free from other carcinogenic residues of low potency. The Agency has rejected this alternative because the degree of public risk associated with the use of a compound would become a function solely of the

capability of available analytical technology.

(C) Practical zero. This approach would have one advantage over alternative (B); it would provide a well-defined criterion for the lowest limit of measurement that a regulatory assay method would have to satisfy. This approach would not, however, take into account differences in carcinogenic "potency" among various carcinogens. Therefore, it is unacceptable for the same reason as alternative (B). Unless the "practical zero" were set at the level appropriate for the most potent carcinogen, it would not provide sufficient protection; but if it were set at that level, it might be unnecessarily stringent for carcinogens that produce a response that is of a lower magnitude. In sum, no one "practical zero" is appropriate for all carcinogens.

(D) Sensitivity of Method (SOM). A third approach is to establish procedures to define "no residue" operationally, on the basis of quantitative carcinogenicity testing of residues, and extrapolation of test data (using one of a number of available procedures). The extrapolation procedure estimates the residue levels that are safe in the total diet of test animals and that would, if they occurred, be considered safe in the total diet of man. This approach (SOM procedures) accounts for differing carcinogenic potencies of each compound, but is feasible only if there is a regulatory assay method to reliably measure the safe level in edible tissue. Under this approach, the Agency accepts a very low level of increased risk of cancer (one case in one million lifetimes).

FDA proposed to adopt this alternative.

Summary of Benefits

Sectors Affected: Veterinary pharmaceutical manufacturing; livestock production; consumers of meat and poultry; and FDA.

The proposal provides uniform criteria and procedures for evaluating the carcinogenic risk presented by residues of sponsored compounds for use in food-producing animals. FDA, industry, and consumers will benefit from uniformity in regulation of such compounds.

Veterinary pharmaceutical manufacturers will know in advance the procedures on which FDA will rely to approve or reaffirm prior approval of applications, if the compound is a suspect carcinogen. FDA will apply a screening mechanism known as "threshold assessment" to make the determination of potential carcinogenicity. This should benefit

sponsors of future applications because they will be able to determine the kinds and extent of evidence that FDA requires to evaluate carcinogenic potential. For some compounds, such evidence already exists, and the manufacturer will avoid unnecessary costs. In other cases, manufacturers may elect to initiate SOM procedures if it appears that the stepwise SOM procedures will identify a safe, feasible residue level and a suitable analytical method for its detection. Finally, there may be cases where manufacturers will avoid the expense of conducting tests for compounds that are unlikely to be approved because their safe residue levels cannot be measured by existing technology.

Consumers of meat and poultry derived from the animals to whom the compounds were administered (either as a drug or a feed additive) will be assured a virtually risk-free supply of these products.

FDA will benefit because the standardized requirements will permit more efficient review of applications, fewer negotiating sessions with industry, and reduced likelihood of legal challenges to its decisions.

Summary of Costs

Sectors Affected: Veterinary pharmaceutical manufacturing; livestock production; and consumers.

The sponsor of a compound subject to SOM procedures would bear the costs to complete the prescribed procedures. The aggregate cost estimate will depend on the outcome of the Agency's "threshold assessment"—the process of identification of known or suspect carcinogens.

Veterinary pharmaceutical manufacturers who sponsor or have sponsored a compound that is subject to SOM procedures (that is, a compound that the threshold assessment finds is a known or suspect carcinogen) would bear the costs to conduct the prescribed testing procedures. These costs could be passed on to livestock and poultry producers who later purchase the products to control diseases and stimulate animal growth. Ultimately, consumers may pay higher prices for meat and poultry.

The draft Regulatory Analysis estimated that the average one-time costs of compliance with SOM procedures for an exogenous substance (a synthetic- or natural-origin substance that is not produced in the body of the food-producing animal) will not exceed \$2.8 million (1979 dollars) for each combination of target species and route of administration. There is a corresponding estimate of \$0.5 million

for endogenous substances (a substance normally produced in the body of the food-producing animal). The aggregate cost will depend on the number of known or suspect carcinogens identified by the threshold assessment. Thus, the greater the number of compounds that are identified, the greater the aggregate cost. If, after conducting SOM procedures and determining the approvable residue level for a specific compound, the manufacturer is unable to develop a residue-testing method of the required sensitivity (and such a method is otherwise unavailable), FDA would withdraw approval of the product. It is difficult, if not impossible, to predict which products would be affected in this way. The ultimate effect on feedlot operations and on the supply of meat and poultry is in turn subject to speculation about which products may lose market approval. If few products are affected in this way and there is an adequate array of substitute products, the impacts could be small and limited to the substitution costs and some loss of total output of slaughtered animals. Conceivably, however, a number of unique products could be affected and the impact correspondingly higher. FDA's final Regulatory Analysis will address these questions.

Related Regulations and Actions

Internal: FDA is developing procedures and priorities for a review of previously-approved animal drugs.

External: None.

Active Government Collaboration

We are keeping the Department of Agriculture (USDA) informed of our action and they are reviewing the analytical methodology that we require.

Timetable

Tentative Final Rule or Final Rule—May 1981.

Final Regulatory Analysis—Available with Final Rule.

Available Documents

NPRM—44 FR 17070, March 20, 1979.
Data and information supporting the NPRM.

Comments received during public comment periods.

Transcript of the public hearing on June 21–22, 1979.

Draft Regulatory Analysis.

Food and Drug Administration Docket No. 77N-0026.

The above documents are available for review in the Dockets Management Branch, Food and Drug Administration, 5600 Fishers Lane, Room 4-62, Rockville, MD 20857.

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HHS-FDA

Current Good Manufacturing Practice Relating to Poisonous and Deleterious Substances in Food, Feed, and Food-Packaging Materials Plants; Polychlorinated Biphenyls (PCBs) (21 CFR Parts 109*, 110*, 225*, 226*, 500*, and 509*)

Legal Authority

Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 342(a), 346, 348, and 371(a); The Public Health Service Act, 42 U.S.C. § 264.

Reason for Including This Entry

The Food and Drug Administration (FDA) includes this entry because the proposed rule could have an annual economic impact in excess of \$100 million.

Statement of Problem

Polychlorinated biphenyls (PCBs) are a class of chemicals that have been widely used in electrical transformers, capacitors, electromagnets, and heat transfer and hydraulic systems. They are useful in industrial applications due to their chemical stability, low flammability, high boiling points, and low electrical conductivity. PCBs were also used as plasticizers in the manufacture of paints, adhesives, and caulking compounds, as fillers for investment casting waxes, and as dye carriers in carbonless copy paper.

Although PCBs were first manufactured and commercially marketed for industrial uses in 1929, it was not until 1967 that their presence in the food supply was detected. At that time and during years since, the Food and Drug Administration (FDA) encountered a number of isolated industrial accidents resulting in PCB contamination of animal feed and human food. These accidents involved either the spillage or leakage of the chemical directly onto animal feed from manufacturing equipment, or animal feed otherwise coming in physical contact with PCB-containing materials. The consumption of the contaminated feed by food-producing animals resulted in the transfer of PCBs to human food (e.g., milk, meat, eggs).

FDA became aware of the hazards of PCBs to human health from an incident that occurred in Yusho, Japan, in 1968 when very high levels of PCBs leaked from processing equipment and contaminated rice oil. The PCB-contaminated rice oil was sold as salad oil and, after several weeks, consumers were stricken with the so-called "Yusho" disease which ultimately was traced to the PCBs. Among the many symptoms exhibited by the victims of this disease were chloracne (skin rash), discoloration of the gums and nailbeds, swelling of joints, and waxy secretions from glands in the eyelids.

The levels of PCB that produced those effects substantially exceeded the levels of PCB found at any time in the U.S. food supply. However, because PCBs accumulate in the fatty tissue of humans and animals, FDA found ample evidence that prolonged exposure to PCBs, even at low levels, posed a potential health risk. Therefore, FDA concluded that there was a need to limit consumer exposure to PCBs in food and, to accomplish this end, FDA decided to eliminate the use of PCB-containing equipment in food and feed establishments.

On July 6, 1973, FDA promulgated final regulations (38 FR 18096) providing that new equipment or machinery for handling or processing human food and animal feed and for manufacturing food or feed-packaging materials shall not contain PCBs. FDA required the establishments in these industries that had such equipment in place to replace any PCB-containing fluids in such equipment with fluid that did not contain PCBs by September 4, 1973. The regulations, however, specifically exempted electrical transformers and condensers (capacitors), which hold PCBs in sealed containers because, at that time, there were no known suitable replacement fluids for such equipment, and FDA did not expect their use in FDA-regulated establishments to result in direct contact with materials being processed.

Since 1973, FDA has received toxicity data based upon laboratory animal studies that demonstrate a definite association between low-level PCB exposure and potentially more serious subchronic and chronic toxicities, including adverse reproductive effects, liver damage, and tumor production. One of these studies also has confirmed many of the adverse effects exhibited by the Yusho victims.

Recently, FDA studies a number of incidents in which the use or disposal of PCBs resulted in contamination of food in the United States. PCBs leaking from damaged spare transformers and

contaminating feed for poultry and livestock caused at least two of these incidents. The contaminated feed caused PCBs to be carried into human food. A fire in a warehouse in Ponce, Puerto Rico, caused one of the incidents, in 1977, when PCBs were released from transformers stored in the warehouse. The warehouse served as a storage area for tuna fishmeal which was dried, rebagged, and shipped to manufacturers for use in the manufacture of animal and fish feeds. Over 2 million pounds of finished feed and fishmeal were contaminated, more than 400,000 chickens destroyed, and millions of eggs withheld from consumer markets.

The second transformer incident occurred in a federally inspected meat-slaughtering and processing establishment in Billings, Montana, in 1979. A spare transformer, stored in a shed at the packing plant, leaked an estimated 200 gallons of PCB-containing transformer oil into the plant's waste water system. The solids that the operators recovered from the plant's waste water system were rendered, and these rendered residues were included in meat meal. This contaminated meat meal was then fed to poultry and livestock and caused the contamination of approximately 800,000 chickens, 3.8 million eggs, 4,000 hogs, 800,000 pounds of assorted animal feeds and feed ingredients, and many bakery items in which contaminated eggs were used. Quick action by plant officials and a U.S. Department of Agriculture (USDA) inspector, who recognized PCB leakage from a capacitor in a federally inspected hog-slaughtering establishment in Iowa, prevented another incident of potential massive contamination.

Alternatives Under Consideration

The agency described several alternatives in its proposed rule published in the *Federal Register* of May 9, 1980 (45 FR 30984):

(A) No change. The Agency rejected this alternative because it concluded that the continued use of PCB-contaminated electrical equipment would pose unreasonable risk of injury to human health. FDA cannot readily measure the potential harm, but the recent contamination incidents demonstrate the extent to which large numbers of people can be exposed to PCB health risks because of a single contamination.

(B) Complete ban. A complete ban on equipment containing any level of PCBs in food, feed, and food-packaging plants, i.e., a "zero" level in electrical fluids, would be unnecessarily restrictive. This approach would not allow the retrofitting of transformers i.e., refiling

transformers with fluids that do not contain PCBs, where it is the less expensive option. Furthermore, the significantly higher costs may not assure any additional safety.

(C) Inspection program. A contract study, prepared by EPA, examined this alternative, which requires regularly scheduled inspection of PCB-containing equipment, in lieu of replacing such equipment. While annual inspection costs were projected to be lower than replacement or retrofitting equipment, they must be endured for the life of the equipment and, consequently, the cost of this option has a higher net present value than costs of the alternative. Also, an inspection program, however rigorous, cannot necessarily prevent contamination experienced in recent incidents.

(D) Restrict PCBs in new equipment only. This alternative would require companies using PCB-containing equipment to replace it at the going obsolescence rate for transformers and capacitors. This would extend the danger of PCB contamination in foods over many years, because the life of a transformer can exceed 40 years.

Variations on this option could phase out PCB-containing equipment over periods of time shorter than the remaining life of existing equipment, thus reducing the immediate economic impact of the proposal. This alternative may also ensure that the demand for replacement transformers and capacitors would be more easily met by the electrical manufacturing industry. Because this alternative does not eliminate the potential public health hazard in an immediate manner, it provides commensurately fewer benefits during the phase-out period.

(E) Installation of protective devices against leaks and spills. This alternative would require owners of transformers and capacitors to install basins, signaling devices, or similar systems to prevent PCBs leaked or spilled from transformers or capacitors from contaminating foods, feeds, and food packaging materials. At the time of the proposal, FDA did not have cost or feasibility data on this alternative, but sought to obtain such information through a contracted survey and also through the comments submitted in response to the proposal.

(F) Restrict the use of PCB-containing equipment in animal feed and feed ingredient facilities only. Recently reported incidents of direct PCB contamination of foods, feeds, and food-packaging material (where the PCB source was known to have been from transformers or capacitors) originated in facilities manufacturing and/or storing

animal fees or ingredients. Therefore, this alternative would remove the most recently experienced problem sources and result in no costs to the remainder of the food and food-packaging industry.

In the proposal, FDA did not consider this option a suitable alternative because there is insufficient evidence to warrant limiting this proposal to the animal feed industries. The potential for leaking PCBs exists in the human food industry, as well, and direct human food PCB contamination would present a much greater health hazard since there would be no PCB dilution as in the feed processing chain.

(G) Restrict the use of PCB-containing equipment in food, feed, and food- and feed-packaging materials facilities. This alternative would prohibit or limit the amount of PCBs in sealed electrical transformers and capacitors used or stored in or around food, feed, and food- and feed-packaging material plants or storage facilities, and require that certain raw materials used in human foods, which are susceptible to PCB contamination, be analyzed as necessary to ensure that they comply with FDA tolerances. Capacitors containing less than 3 pounds of fluid would be exempt from the regulation, because most of the PCBs they contain are in a nonliquid, nonmobile state.

This alternative would significantly reduce the likelihood of additional incidents in which the use or disposal of PCBs resulted in contamination of food or feed. FDA proposed to adopt this alternative.

Summary of Benefits

Sectors Affected: The general public; manufacturers of transformers and capacitors; manufacturers of food and kindred products (except meat, poultry and egg products).

This proposed rule is intended to reduce significantly the likelihood of additional incidents in which the use or disposal of PCBs would result in contamination of food. A reduction of such incidents would be in the interest of protecting the public health and would serve to avoid the necessary destruction of PCB-contaminated food with attendant economic cost. The manufacturers of transformers and capacitors would benefit because of increased demand for new machinery.

Summary of Costs

Sectors Affected: Manufacturers of food and kindred products (except meat, poultry and egg products); consumers of these products; public warehousing of food and feeds; manufacturing of food-packaging materials, including metal cans and

shipping containers, wood and plastic containers, and paperboard containers and boxes.

While we do not have sufficient data for a reliable estimate of transformer and capacitor use in the industries subject to this proposal, it seems likely that transformers and capacitors are concentrated in large establishments. Data which FDA has contracted for or has requested be included in comments submitted on the proposal should permit us to define with greater precision the sectors that will be affected by the proposal.

The alternative proposed by FDA would permit an FDA-regulated food, feed, and food-packaging establishment either to replace PCB-containing transformers and capacitors with non-PCB equivalents or to drain the PCB-containing fluid from transformers and refill them with a fluid containing not more than 50 parts per million (ppm) PCB. We presume that all capacitors must be replaced because we do not believe retrofilling of capacitor fluid is practical. The proposed rule has the potential to affect establishments using PCB-containing equipment where there exists the possibility of contaminating the food supply. FDA knows of approximately 76,000 food establishments, including 34,000 food manufacturers and 24,000 food warehouses. Additionally, we know there are an unknown number of food and feed packaging materials establishments. We also know that not all these establishments use PCB-containing equipment, but do not know their proportions. That is, we have no reliable estimates of the number of potentially affected establishments that own or use utility-owned transformers or capacitors. Neither do we have reliable estimates of the proportion of such equipment that may be PCB-free, nor of the proportion of such equipment that may be used or stored in such a way that it is not in or around a plant or facility within the meaning of FDA's proposal.

Consumers may bear some of the costs of replacing or retrofilling PCB-containing equipment. The magnitude of these costs depends on the extent to which PCB-containing equipment is in use in the industries subject to this proposal.

The preliminary analysis of this proposal indicates that the economic costs of the proposal would exceed \$100 million, the threshold established by Executive Order 12044 for requiring a Regulatory Analysis, even though a reliable estimate of economic costs cannot be made without additional data. (See USDA-FSQS, Proposed

Polychlorinated Biphenyls (PCBs) Regulation, for more information on this point.)

FDA expects to obtain additional insight into the feasibility and costs of its proposed actions, as well as alternatives to it. An Environmental Protection Agency (EPA) contract study to determine the prevalence of PCBs and the costs of removing them from the affected industries is currently under way. In addition, FDA extended the public comment period to November 4, 1980, so that interested persons would have sufficient time to collect and submit similar data. The final Regulatory Analysis and final rule will reflect these additional inputs.

Related Regulations and Actions

Internal: 21 CFR Parts:

109—Unavoidable Contaminants in Food for Human Consumption and Food-Packaging Material;

110—Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding Human Food;

225—Current Good Manufacturing Practice for Medicated Feeds;

226—Current Good Manufacturing Practice for Medicated Premises;

500—General; and

509—Unavoidable Contaminants in Animal Food and Food-Packaging Material.

External: Environmental Protection Agency—40 CFR Part 761—Polychlorinated Biphenyls (PCBs); Department of Agriculture, Food Safety and Quality Service—7 CFR Part 2859—Inspection of Eggs and Egg Products (Egg Products Inspection Act of 1970), 9 CFR Part 308—Sanitation, 381—Poultry Products Inspection Regulations.

EPA published a proposal in the *Federal Register* of May 9, 1980 (45 FR 30989) to restrict the use of PCBs at agricultural pesticide and fertilizer facilities.

USDA published a proposal in the *Federal Register* of February 29, 1980 (45 FR 13471) to amend the Federal meat, poultry, and egg products inspection regulations by prohibiting the entry of new or replacement equipment and machinery containing PCBs onto the premises of plants under their jurisdiction. USDA has also published a proposal in the *Federal Register* of May 9, 1980 (45 FR 30980) to prohibit PCB-containing equipment or machinery and liquid PCBs in federally inspected meat, poultry-product, and egg product plants. Comments received as a result of the USDA proposals, the EPA proposal, and FDA's proposal will be shared among the members of IRLG.

Active Government Collaboration

As a result of the multiagency involvement in PCB containment and the recent incidents of PCB leakage from electrical transformers and capacitors, FDA, as a member of the Interagency Regulatory Liaison Group (IRLG), joined in a cooperative effort with the Environmental Protection Agency (EPA) and the Food Safety and Quality Service of the U.S. Department of Agriculture (USDA) to determine if any additional controls were necessary to further protect the public health from the use of PCB-containing equipment in or around food and feed facilities.

EPA sponsored and EPA, FDA, and USDA distributed a technical booklet entitled "Polychlorinated Biphenyls: An Alert for Food and Feed Facilities," December 1979, which was the result of interagency cooperation. We prepared this booklet to aid the food, feed, pesticide, and fertilizer industries in identifying potential problems with PCBs and to recommend that these industries institute a program for preventive action without delay. This cooperation also resulted in the agencies' concluding that further mandatory controls are needed.

Timetable

Final Rule—To be coordinated with EPA and USDA—1982.

Final Rule Effective—FDA proposes that any final regulations resulting from this proposal be effective 180 days after the date of publication of the final regulations in the *Federal Register* or after an incinerator approved by EPA for the disposal of PCBs is available, whichever is later.

Regulatory Analysis—Final

Regulatory Analysis with final rule.

Available Documents

NPRM—45 FR 30984, May 9, 1980.

Data and information supporting the NPRM.

Transcript of the public meeting held November 7, 1980.

Comments received during public comment period.

FDA's testimony to Congress regarding the NPRM

Draft Regulatory Analysis.

Food and Drug Administration Docket No. 80N-0128.

The above documents are available for review in the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

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HHS-FDA

Food Labeling Initiatives (21 CFR Chapter I*, 7 CFR Chapter XXVIII*, 9 CFR Chapter III*, 16 CFR Chapter I*)

Legal Authority

Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 321(n), 343, and 371(a) *et seq.*

Reason for Including This Entry

The Food and Drug Administration (FDA) includes this entry because some of the proposed changes in food labeling are economically significant and potentially controversial issues of broad public interest.

Statement of Problem

The Food and Drug Administration (FDA), the U.S. Department of Agriculture (USDA), and the Federal Trade Commission's Bureau of Consumer Protection (FTC) believe that the existing Federal food labeling laws and implementing regulations should be updated. These laws are enforced by the USDA (meat and poultry) and FDA (all other foods). The FTC is interested in food labeling because it is responsible for regulating food advertising.

Congress enacted the first Federal food laws in 1906, and, although some changes have been made since, the basic concepts of food labeling have remained unchanged for many years. For example, the last major revision of the food labeling provisions of the Federal Food, Drug, and Cosmetic Act (FD&C) administered by FDA was in 1938.

Since these food laws were enacted, significant changes have occurred both in the food industry and in Americans' attitudes toward the food supply and their diet. Advances in the food industry have resulted in a wider variety of available foods and increased availability of fresh foods. At the same time, the number of processed foods on the market now account for more than half of the American diet.

Federal agencies have attempted to meet these changes through labeling regulations. Because different regulatory agencies are responsible for different aspects of food labeling, the resulting rules have been complex, duplicative, and/or inconsistent. FDA, USDA, and

FTC realized a need to reassess the existing food labeling regulations before implementing any further revisions.

In 1978, the agencies conducted a series of five public hearings soliciting views on food labeling issues, and FDA sponsored a Consumer Food Labeling Survey to determine public opinion. The agencies designed these efforts to provide themselves with information that would help develop legislative proposals or goals, devise new or revised regulations, and eliminate any unnecessary regulatory requirements. The announcement of hearings and request for comments on a series of food labeling topics were published in the *Federal Register* of June 9, 1978 (43 FR 25296). The agencies sought the public's views on many issues, including ingredient labeling, nutrition labeling and dietary information, open date labeling (e.g., pack date or sell by or use by date), food fortification, the labeling of imitation and other substitute foods, safe and suitable ingredients, and the total food label as an information source for consumers.

Over 9,000 people commented on these and other related food labeling issues. They especially wanted labels describing all ingredients for *all* foods, nutrition labeling on more foods, open dating on more foods, labeling of sugars content, and labels telling a product's salt (sodium) content. FDA, USDA, and FTC analyzed these comments and published their tentative positions on 27 food labeling issues—ranging from ingredient labeling to nutrition labeling to the labeling of imitation and substitute foods—in the *Federal Register* of December 21, 1979 (44 FR 75990) for further comment. In the same issue of the *Federal Register*, the agencies announced a public hearing held on March 4 and 5, 1980 to hear oral testimony on the 27 positions and issues. Subsequent to the December 21, 1979 notice, and as a consequence of the March hearings, FDA received hundreds more comments. FDA is now in various stages of preparing a number of specific labeling proposals stemming from these proceedings.

Alternatives Under Consideration

The agency considered several alternatives for this program:

(A) No change. This alternative would be unresponsive to consumers' expressed desire for more informative food labeling.

(B) Seek voluntary food labeling changes by industry. This alternative may or may not be responsive to the consumers' specific information needs. It could result in partial, incomplete, or

inconsistent food labeling which may be difficult for consumers to interpret.

(C) Issue new or revised regulations. Although industry voluntarily may adopt some food labeling initiatives, other initiatives will require agency action through new or revised regulations to ensure food labeling uniformity and consistency. Where the agencies have authority to act, there appears to be a need for action, and the issues seem clear, the agencies could develop proposed revisions of the food labeling regulations. FDA is now in the process of identifying areas of activity that meet these criteria.

(D) Seek new legislative authority. Certain changes in the food labeling regulations that the agencies favor would require additional legal authority: for example, declaration of mandatory ingredients in standardized foods and open date labeling.

Summary of Benefits

Sectors Affected: The general public.

The benefits that will accrue from improved food labeling are difficult to quantify. Qualitatively, the benefits can be viewed in the context of protecting public health and helping consumers make sound purchasing decisions.

Of the factors that guide the agency in making food-labeling changes, the public health consideration is the most important. From this latter standpoint, consuming essential nutrients in sufficient quantities is vital to human health. A person can achieve this goal only by eating a variety of foods. An improper selection of foods can result in a person receiving inadequate or excessive amounts of nutrients, either of which may be detrimental to health.

Accurate and informative labeling concerning a product's ingredients and nutrient content is of even greater public health significance now than in the past, because advances in technology have created more processed and fabricated foods whose nutrient content and other characteristics are not readily discernible to consumers without adequate food labeling. As the relationship of nutrition to certain diseases is becoming better understood, food labeling becomes even more important by providing consumers with information for choosing products. In some instances (e.g., sodium labeling) food labeling may be the most effective method for providing health protection.

Many Americans need special diets because of disease or abnormal physiological conditions, such as allergies. These people especially need accurate food labeling information.

Summary of Costs

Sectors Affected: Manufacturers of food and kindred products other than meat and poultry; and consumers of these products.

The food-labeling initiatives will affect all segments of the food manufacturing industry, regardless of size. Small businesses may be disproportionately affected by the costs associated with revising labels. FDA can alleviate this effect somewhat by providing sufficient time for making the changes, and by setting a reasonable uniform effective date. The agencies assume that most of the immediate cost impacts on food-processing firms will be passed on to consumers through increases in product prices. Ultimately, therefore, it is consumers to whom the cost as well as the benefits of the initiatives will accrue.

FDA is currently working on a regulatory assessment of possible food labeling changes. A number of initiatives will warrant detailed analysis of their economic impact as a step toward selection of specific proposals and courses of action. The agencies, therefore, will ask the public for data or analyses that may be helpful in clarifying and quantifying the economic impact of alternative proposals on industry and consumers as needed.

In addition, FDA has contracted for a number of studies to determine the economic impacts of the possible labeling changes. FDA expects to begin receiving the results of these studies by the end of 1980. The agencies expect that additional evidence of economic impact of the various alternatives will accumulate during the course of the legislative and rulemaking process.

Related Regulations and Actions

Internal: In the Federal Register of July 8, 1980 (45 FR 45962), FDA announced a series of public meetings, and a contract with a professional design firm, to explore and develop alternative food label formats for presenting nutrition and ingredient information.

External: None.

Active Government Collaboration

FDA will develop any subsequent food labeling revisions in cooperation with the Food Safety and Quality Service of the U.S. Department of Agriculture and the Bureau of Consumer Protection of the Federal Trade Commission. The agencies will initiate activities to implement food labeling revisions according to each agency's authorities and procedures, and will coordinate such action with other

agencies to ensure consistency among them.

In addition, we are keeping the White House Office of Consumer Affairs advised of these activities.

Timetable

NPRM—FDA expects to begin issuing NPRMs to implement food labeling revisions during the first or second quarter of 1981.

Regulatory Analyses—will accompany NPRMs.

Public Comment Periods—To be determined.

Public Hearings—To be determined.

Final Rules—To be determined.

Available Documents

Notices of Hearings and Requests for Comment on Food Labeling Issues—43 FR 25296, June 9, 1978; 44 FR 75990, December 21, 1979.

Food Labeling Background Papers.

FDA 1978 Consumer Food Labeling Survey.

Food labeling report on the analysis of comments.

Transcripts of the six public hearings and written comments on food labeling issues.

Food and Drug Administration Docket No. 78N-0158.

The above documents are available for review in the Dockets Management Branch, Food and Drug Administration, 5600 Fishers Lane, Room 4-62, Rockville, MD 20857.

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HHS—Health Care Financing Administration

Conditions of Participation for Skilled Nursing Facilities and Intermediate Care Facilities (42 CFR Parts 405* and 442*)

Legal Authority

The Social Security Act, as amended, Title XI (Professional Standards Review Organizations), Title XVIII (Health Insurance for the Aged and Disabled), and Title XIX (Grants to States for Medical Assistance Programs), 42 U.S.C. §§ 1102, 1814, 1832, 1833, 1861, 1865, 1866, 1871, 1302, 1395f, 1395k, 1395t, 1395x, 1395z, 1395bb, 1395cc, and 1395hh.

Reason for Including This Entry

The Department of Health and Human Services (HHS) includes this entry because it concerns precedent-setting requirements regarding patients' rights and comprehensive care in skilled nursing facilities (SNFs) and intermediate care facilities (ICFs).

Statement of Problem

In order to participate as a provider of institutional long-term care services under the Medicare and Medicaid programs, a facility must be an SNF within the meaning of § 1861(j) of the Act or an ICF within the meaning of § 1905(c) of the Act. These sections of the Act and additional health and safety regulations contained in the Conditions prescribe specific standards that facilities must meet in order to be eligible to participate in the Medicare and Medicaid programs. Participation in either program is voluntary.

SNFs and ICFs are surveyed at least annually by State Government survey personnel under contract with the Department of Health and Human Services. Based on information obtained during the survey, the HHS Regional Office certifies facilities for participation in the programs. However, if the facility elects to participate only in the Medicaid program, the State makes the certification decision.

Presently, there are approximately 8,058 Federal- and/or State-certified SNFs and 10,883 ICFs containing approximately 1,500,000 certified beds.

The proposed revision is designed to simplify, clarify, and integrate the existing distinct regulations governing SNFs and ICFs to focus on patient care, to promote cost containment while maintaining quality care, and to achieve more effective compliance. The revision of the Conditions for SNFs and ICFs is only the first of a three-phase process. During the second phase, we will revise the interpretive guidelines which must complement the proposed regulation. Finally, during the third phase of the revision process, we will develop a new survey form which will focus the surveyor's attention and documentation toward outcome measures of patient care. All three phases of the revision process represent an integration of the existing distinct regulations, interpretive guidelines, and survey forms governing SNFs and ICFs respectively.

Alternatives Under Consideration

In the proposed regulation, we have elevated patients' rights to the level of a Condition in order to give substance to the Department's commitment to the rights of individuals in SNFs and ICFs.

We intend to reaffirm the position that institutionalization in a nursing home does not constitute an abrogation of rights and, further, we set in place a mechanism to ensure this by incorporating a more definitive structure for patients' rights in the survey process.

As part of the expansion of patients' rights, we have proposed a stronger provision on accessibility. This will ensure access at all times to nursing home ombudsmen and legal advocates. However, since the patient has the right to see or refuse to see anyone, it is the patient who will ultimately determine just how accessible he or she will be. Other provisions include access to information, the right to form resident councils, to be fully informed regarding all decisions affecting them, to privacy, and to have personal property. The standards comprising this Condition reinforce the concept that patients should be permitted to do as much for themselves as possible to forestall being cast in a dependent or helpless role. Further, we have invited comments on how to accomplish the patient's right to a comfortable and familiar surrounding while respecting the facility's needs and obligation to protect the health and safety of their patients.

A second significant change is the introduction of a patient care management system (PCMS). PCMS is a systematic, holistic approach to the care of the long-term patient. The process begins upon admission to the SNF or ICF when a comprehensive, interdisciplinary assessment of the patient's medical, physical, and psychosocial needs is conducted. The findings of the assessment will serve as the basis for planning the individual's care. Clearly delineated, time-limited goals will characterize that plan of care. Periodic evaluations will review goal achievement and changes in needs which should trigger new goals. This process will result in more individualized patient-centered care planning.

By creating the conceptual framework for total patient care and treatment, we hope to integrate the fragmented approach so reminiscent of the acute care model. PCMS actually consolidates the care planning standards of five existing Conditions (Nursing, Social Services, Dietetic Services, Rehabilitative Services, and Patient Activities) under one Condition. Other standards throughout the proposed regulation relating to patient care include cross references to PCMS. Ultimately, we expect PCMS to facilitate treatment of the whole person.

Summary of Benefits

Sectors Affected: Skilled nursing facilities and intermediate care facilities (nursing and personal care facilities) participating in the Medicare and Medicaid programs; patients and staff of these facilities; and State health agencies.

We have developed a single set of conditions of participation which are applicable to both SNFs and ICFs. Where possible, general provisions, e.g., Administration, Patient Care Management, Physical Environment, Safety, and Patients' Rights have been made uniform. Differences in patient needs and level of care are reflected in provisions such as staffing and required services.

Under PCMS, HHS will specify minimum data requirements and common definitions, but will permit States to include their own data requirements as well. The benefits inherent in this strategy include:

- States will have the opportunity to coordinate and include data needs for quality assurance review, e.g., Inspections of Care and PSRO Long Term Care Review;
- surveyors and review teams can be trained at the State level in the review and documentation which is specific to their State;
- States and facilities which already employ some form of assessment will not necessarily have to abandon their existing system, especially if it already contains the required critical data elements; and
- paperwork will be limited to a single form which will satisfy both Federal and State requirements.

Expansion of patients' rights—not just legal rights, but the right to self-determination and involvement in planning the services and activities which will characterize the patient's life for an extended period of time—testifies to HHS's position that one does not surrender the right to self-determination when entering a SNF or an ICF. The standards in the patients' rights Condition reinforce the specifics of this concept and will become items to be evaluated during the survey process.

Development of new survey forms and interpretive guidelines will improve the survey and certification process by streamlining the information needed and making the requirements more surveyable. The surveyor's attention and documentation will be redirected toward more outcome-, patient-focused evaluation of compliance with the regulations.

Summary of Costs

Sectors Affected: Skilled nursing facilities and intermediate care facilities (nursing and personal care facilities) participating in the Medicare and Medicaid Programs; patients of these facilities; and Federal and State certification Personnel.

In an effort to explain how we arrived at the provisions of the proposed rule, we have prepared a Regulatory Analysis of the regulation in accordance with Executive Order 12044, "Improving Government Regulations," issued March 23, 1978. This document contains an extensive discussion of the major issues discussed in the regulation, the options considered, along with factors such as cost and benefit which were weighed in the considerations, and the rationale for options being accepted or rejected. Our preliminary estimates indicate the annual cost increase that would result from the proposed options to be approximately \$80 million, which represents about .5 percent of annual nursing home expenditures (\$15.75 billion in FY 1978) and about 1 percent of Medicare and Medicaid payments to nursing homes.

Comments were invited on the Regulatory Analysis, which will be revised and reissued when the final regulation is published.

Related Regulations and Actions

Internal: Consolidation of Survey and Certification Requirements for Medicare and Medicaid (42 CFR Parts 405 and 431). A regulation proposal was contained in 45 FR 13477, February 29, 1980. Protection of Patients' Funds in Nursing Homes. An NPRM was published in 45 FR 49440, July 24, 1980.

Adoption of the National Bureau of Standards Fire Safety Evaluation System for Health Care Facilities. An NPRM was published in 45 FR 50264, July 28, 1980.

Automatic Extinguishment Systems for New Long Term Care Facilities. An NPRM was published in 45 FR 50268, July 28, 1980.

Charges to Patients' Funds in Nursing Homes. Regulation proposal is under development and the projected publication date for the NPRM is December 1980.

External: None.

Active Government Collaboration

Various agencies within the Department of Health and Human Services involved in long-term care; the Federal Trade Commission; various State agencies concerned with survey and certification and reimbursement for long-term care.

Timetable

Final Rule—December 31, 1980.

Available Documents

Notice of Proposed Rulemaking on the Conditions of Participation for Skilled Nursing and Intermediate Care Facilities (45 FR 47368, July 14, 1980).

Draft Regulatory Analysis on the Conditions of Participation for Skilled Nursing and Intermediate Care Facilities (June 30, 1980).

Public comments on the NPRM and draft Regulatory Analysis are available for public inspection in Room 309G of the Department's offices at the Hubert H. Humphrey Building, 220 Independence Avenue, Washington, DC 20201, (202) 245-7890.

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HHS-HCFA**Consolidation of Survey and Certification Requirements for Medicare and Medicaid (42 CFR 405* and 431*)****Legal Authority**

The Social Security Act, as amended, Titles 11, 18, and 19, 42 U.S.C. §§ 1302, and 1395 *et seq.*

Reason for Including This Entry

The Department of Health and Human Services (HHS) includes this entry because of its potential for impact on consumers, health care industry, and State agencies. Our goal is to streamline the survey and certification process. Streamlining these processes would reduce administrative costs and the reporting burden imposed on Federal and State governments as well as related costs currently imposed on health care providers. At the same time, the processes would be refined to focus on the quality of health services being furnished to program beneficiaries and recipients.

Statement of Problem

In order to participate in the Medicare or Medicaid program, providers of services must be found to meet pertinent requirements, specified in Titles 11, 18, and 19 of the Social Security Act, (hereafter referred to as "the Act") and related regulations. The Act (§ 1864) further requires that the Secretary of HHS enter into an agreement with a

State agency for the purpose of performing surveys to ascertain compliance with program requirements. Under this agreement, the State survey agency is further required to certify to the Secretary whether health care providers meet program requirements.

For Medicare providers, the State's certification is, in essence, a recommendation to the Secretary. The Health Care Financing Administration (HCFA), on behalf of the Secretary, determines whether a provider of services is eligible to participate using the State agency's certification. If HCFA approves, it enters into an agreement (§ 1966 of the Act) with the provider of services.

For Medicaid, the statute (§ 1902(a)(33)(B)) requires that the State survey agency determine compliance with health and safety requirements. The survey agency must then certify its findings to the State Medicaid agency. In this instance, the certification is a determination of eligibility, not a recommendation. If eligibility is established, the State Medicaid agency will enter into an agreement (§ 1902(a)(27) of the Act) with the health care provider.

HCFA has certified providers based on the results of surveys since the earliest days of the program. From the very beginning, health care providers were required, by regulation, to be approved annually for program participation. However, it was not until 1973, following implementation of P.L. 92-603, that a single survey agency for Medicare and Medicaid was established. Prior to 1973, separate surveys were typically conducted for Medicare and Medicaid by separate agencies. Even after 1973, the Medicaid State agency continued to conduct medical reviews and Independent Professional Review in Medicaid facilities.

Additionally, prior to the creation of HCFA, Medicare was administered by the Bureau of Health Insurance, Social Security Administration, whereas Medicaid was guided centrally by the Medical Services Administration, Social and Rehabilitation Service. (By law, each State administers its own Medical Assistance Program.) Other agencies, such as the Office of Long Term Care (ONHA) and the Bureau of Quality Assurance (BQA), were also involved in establishing policies affecting survey and certification for the Medicare and Medicaid programs.

At the same time, the health industry has gained sophistication, in terms of knowing what they have to do in order to participate. In contrast to the early days of the programs, when residential

nursing homes were upgraded to meet skilled nursing requirements, facilities are now built to conform with program requirements. Similarly, the chain organization, with its resources and managerial expertise, has had a significant impact on the industry.

HCFA believes that the survey and certification process needs reassessing. Provider groups complain about the extreme reporting burden. Consumers and their advocates claim that we are not really looking at the quality of care, and are insisting that they be involved in the survey and certification of health care facilities. The Office of Management and Budget is insisting that we reduce administrative costs and the public reporting burden. State agencies and providers complain that often multiple State agencies survey the same facilities, but arrive at different conclusions.

HCFA, relying on its own program experience, knows that some of the procedures currently required are either inefficient or ineffective, particularly when applied universally to the 37,000 health care providers that participate in Medicare or Medicaid. For example, all providers are now required to be surveyed annually. Survey records document that a significant percentage have a history of complying with program requirements. In other words, the facilities are surveyed year after year, but no significant deficiencies are cited. We must question whether our finite resources should be used to reaffirm continuing compliance, or whether these resources should be focused on marginal performers. Similarly, regulations now require that facilities submit, quarterly, staffing reports. Certainly, for some facilities (those having marginal staff) this data would enable the State agency to monitor facilities staffing. We do not feel that this kind of requirement should be applied to all facilities. Providers complain that these staffing reports are time-consuming and a reporting burden. States complain that they do not need this information for all facilities and do not use it.

The State agencies are budgeted approximately \$70,000,000 to conduct surveys and certify their findings. There are about 37,000 health care providers who participate in Medicare or Medicaid. In these times of Federal budgetary restraints and escalating costs of health care, HCFA believes it important to consider ways of making the process more efficient, cost effective, and meaningful in terms of evaluating the quality of care actually being

furnished program beneficiaries and recipients.

Alternatives Under Consideration

Following publication of a Regulation Proposal on February 29, 1980 (45 FR 13477), we published a Notice of Public Meeting on March 7, 1980 (45 FR 14900). Public hearings were held in each of the HHS Regions and in Washington, DC. The purpose was to solicit public reaction and comment on a set of survey and certification issues which we, along with State agencies and Regional Offices, had identified as needed modifications. Copies of the issue papers were announced and made available, in advance, to all persons expressing interest in either testifying or submitting written comments. Proposals included in the issue papers were made, not as official HCFA positions, but rather as a way of presenting example alternatives.

We solicited public comment and recommendations on the following issues:

- whether annual surveys for all health care providers should be retained, or whether some process that allowed flexible survey cycles should be adopted;
- whether all facilities providing inpatient care should be required, quarterly, to submit staffing reports, or whether this should be required as the State agency deems necessary;
- whether we should continue to require that small hospitals meet the same requirements as the large hospitals, or whether requirements should reflect the scope and complexity of the services being furnished;
- whether various quality assurance reviews should continue to be done by Professional Standards Review Organizations (PSROs) and the Medicaid State agency, apart from the certification survey, or whether all these programs should be consolidated into one program;
- whether State agencies should continue to be required to follow up with providers within 90 days after the survey to ascertain the provider's progress in correcting problems cited by the State during its survey, or whether the revisit should coincide with the provider's projected correction date;
- whether Federal surveyors should continue to survey hospitals on Indian reservations, but not long term care facilities, or whether Federal surveyors should survey all Indian health facilities;
- whether HCFA should require that JCAH hospitals disclose JCAH survey findings;
- whether HCFA should specify surveyor qualifications;

- whether, and the extent to which, patients, family, and friends should be included in the survey and certification process; and

- whether HCFA needs to more clearly define what constitutes compliance.

We have received thousands of comments on each of the above issues. Following analysis we will prepare option papers, then set forth the alternatives offered, and the advantages and disadvantages of each. Once decisions are made on the proposals, an NPRM will be developed.

Summary of Benefits

Sectors Affected: The Federal Government; State Health Departments, State Social Services Departments; and 37,000 health care service providers, consumers, and their advocates.

The amount of overall savings will vary depending upon which proposals are adopted. Since we have every intention of making the process more efficient, we anticipate real cost savings. For example, if only 10 percent of the providers were surveyed every two years, we would save about \$6,000,000 ($10 \times 37,000 \times \$70,000,000$ divided by $37,000 = \$5,920,000$). This would also reduce the overall reporting burden now imposed on providers.

Other proposals, if adopted, could increase costs. If, for example, we establish credentialing requirements for surveyors, we would see an increase in State agency staff costs, since health specialists are generally higher salaried than generalists. On the other hand, the State surveys would be of a higher quality and therefore impact favorably on patients and residents.

We anticipate a more efficient process which will reduce provider reporting burden and overall Federal and State costs. Further, we see the process being returned to what it was designed to do—determine whether providers of services meet program requirements. Eliminating superfluous procedures not directly related to assessing quality of care and the facilities in which it is being furnished will enable the Federal and State governments to focus their limited resources where they are most needed. This will ultimately benefit the beneficiaries and the tax paying public.

Summary of Costs

Sectors Affected: The Federal Government.

We foresee no additional cost to providers of services. The purpose is to reduce overall administrative costs and the public reporting burden. Depending on proposals adopted, some could

produce additional costs to the Federal Government. Any State costs would be assumed by the Federal Government through the State agency budgeting process. Overall, we see a cost reduction.

Related Regulations and Actions

None.

Active Government Collaboration

State agency personnel participated in a work group to identify procedures that should be considered for revision. Other Bureaus within HCFA and the Office of General Counsel will have the opportunity to comment on proposals before they are adopted.

Timetable

NPRM—March 31, 1981.

Public Comment Period—60 days following publication of NPRM.

Address comments to:
Administrator, HCFA, P.O. Box 17082, Baltimore, MD 21235.

Additional Public Hearing—None.

Regulatory Analysis—To be determined.

Final Rule—March 1982.

Available Documents

Regulation Proposal (42 FR 13477, February 29, 1980).

Notice of Public Meetings (42 FR 14900, March 7, 1980).

Issue Papers—These issue papers were sent to those who requested them. Their availability was announced in the *Federal Register* on March 7, 1980.

Summary of public hearings.

The above documents are available for review at: Health Care Financing Administration, Health Standards and Quality Bureau, 2-A-2, Dogwood East Building, 1849 Gwynn Oak Avenue, Baltimore, MD 21207.

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HHS—HCFA

Life Safety Code in Hospitals, Nursing Facilities, and Intermediate Care Facilities (42 CFR Parts 405* and 431*)

Legal Authority

Title XVIII (Health Insurance for the Aged and Disabled) of the Social Security Act, 42 U.S.C. 1395 *et seq.*

Reason for Including This Entry

The Department of Health and Human Services (HHS) includes this entry because of its far-reaching impact on health care facilities rendering services to inpatients (i.e., hospitals, skilled nursing facilities, and intermediate care facilities). Insurance companies and manufacturers will also be affected.

Statement of Problem

In order to participate in the Medicare and Medicaid programs, hospitals, nursing homes, and intermediate care facilities (ICFs) are required to meet a number of conditions. One of the conditions requires facilities to meet the Life Safety Code (LSC) provision of the National Fire Protection Association (NFPA). This code contains a detailed set of standards, mostly related to safety aspects of the physical plant, such as structure, fire prevention systems, hazard alarms, etc. Since older facilities often incurred considerable costs attempting to meet these standards, efforts were initiated by the National Bureau of Standards to develop a rating system that would assess a facility's life safety provisions without requiring vigorous adherence to each detailed standard.

Under a contract with the Department of Health, Education, and Welfare (HEW), the National Bureau of Standards developed "A System for Fire Safety Evaluation of Health Care Facilities." The system was approved by the Department of Commerce in December 1978. Under this new LSC evaluation system, safety provisions are assigned numerical values by which HHS measures compliance with the LSC. Therefore, two facilities with differing safety provisions could still be rated as having equivalent levels of life safety.

On June 28, 1979, the Department published a notice in the *Federal Register* (44 FR 37818) which proposed extending the fire safety evaluation system evolved by the National Bureau of Standards to all hospitals participating in the Medicare and Medicaid programs and requesting comments on whether the system should be extended to skilled nursing facilities (SNFs) and intermediate care facilities (ICFs). On July 28, 1980, a notice was published (45 FR 50264) to extend the system to those institutions as well. The Fire Safety Evaluation System is now being used as an alternative evaluation method in existing older facilities. Regulatory changes concerning new facilities appeared in proposed form when NPRMs for Conditions for Participation of Hospitals and

Conditions of Participation of SNFs and ICFs were published in the *Federal Register* on June 20, 1980 and July 14, 1980, respectively (45 FR 41794 and 45 FR 50373). Under these regulations, facilities newly entering into the Medicare or Medicaid programs would have the option of being evaluated under the 1973 revisions of the NFPA code, as well as the Fire Safety Evaluation System or the 1967 NFPA code. The 1973 code has been updated to take into account advances in fire prevention technology.

If we fail to further regulate in this area, facilities which enter participation in the Medicare or Medicaid programs for the first time would be evaluated under the 1967 NFPA code or the FSES. They would not be able to take advantage of cost-saving technologies addressed in the 1973 code.

Alternatives Under Consideration

The major alternative available is to use the FSES and the NFPA code for evaluating all providers.

Summary of Benefits

Sectors Affected: Hospitals, SNFs and ICFs (nursing and personal care facilities) participating in Medicare and Medicaid will be affected; manufacturers of fire prevention equipment; insurance industries; and health professional organizations.

Depending upon which major alternative is chosen, estimated savings will vary. Estimated savings have not been calculated for the major alternatives. In addition, the age of a facility must determine its level of cost savings. For instance, existing facilities newly entering the program generally will save less money by the 1973 code because it is not economically feasible for them to undertake changes in construction that can be done for a facility in the design stage.

Summary of Costs

Sectors Affected: None.

There are no additional costs involved. A provider will incur no greater costs than previously if it follows the NFPA code. Evaluation will not be made under the FSES or the 1973 version of the NFPA code unless it results in savings to the provider.

Related Regulations and Actions

None.

Active Government Collaboration

The Department of Commerce (National Bureau of Standards) cooperated in preparing the fire safety evaluation system; the Veterans

Administration collaborated in testing its application.

Timetable

Final Rule, Conditions of Participation for Hospitals—December 1980.

Final Rule, Conditions of Participation for SNFs and ICFs—December 1980.

Regulatory Analysis—None.

Available Documents

NPRM—42 FR 4966, January 26, 1977.

NPRM—42 FR 41794, June 20, 1980.

NPRM—42 FR 50373, July 14, 1980.

Life Safety Code in Hospitals, SNFs and ICFs.

Briefing paper on LSC Issues.

Operating Objectives of the LSC unit.

Notice with comment period—44 FR 37818, June 28, 1979.

Notice—45 FR 50264, July 28, 1980.

These documents are available for inspection at 2nd Floor, Dogwood East Building, 1849 Gwynn Oak Avenue, Baltimore, MD 21207.

Persons who wish to obtain a copy of "Life Safety Code in Hospitals, SNFs and ICFs" may do so by sending \$10.00 and requesting publication number 80-195-795 (NBSIR 78-1555-1) from the United States Department of Commerce, 5285 Port Royal Road, Springfield, VA 22151.

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HHS—HCFA

Uniform Reporting Systems for Health Services Facilities and Organizations (42 CFR Part 402)

Legal Authority

Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, § 19, 42 U.S.C. 1121.

Reason for Including This Entry

The Department of Health and Human Services (HHS) includes these regulations because they set a precedent for changing the Medicare/Medicaid reporting methodologies currently employed. The systems we propose will enable the Department to obtain uniform, comparable data necessary for Federal reimbursement of health services facilities, effective cost containment and policy analysis, assessment of alternative reimbursement mechanisms, and health planning.

In FY 1981 the Health Care Financing Administration (HCFA) will pay more

than \$50 billion for services delivered under the Medicare and Medicaid programs. HCFA's ability to manage these publicly funded health care programs has been impeded by current cost-reporting methods, which make it difficult to judge the efficiency of institutional providers and to accurately compare the costs of services furnished within institutions or among institutions.

Statement of Problem

Section 19 of P.L. 95-142 requires improved financial and statistical data from institutional providers of Medicare and Medicaid services to accurately identify costs and to aid in the control of the escalating inflation rate in health care costs. It requires the Secretary of Health and Human Services to establish a uniform reporting system for institutional health care providers.

With the beginning of the Medicare program in 1966, the Federal Government reimbursed providers of health services on the basis of costs they incurred. The Government made reimbursement under a relatively unsophisticated mechanism compatible with the individual provider accounting systems of the time. Since then, health care costs have risen dramatically. During the last 2 years alone (1978 and 1979), hospital costs rose at an annual rate of 12.5 percent. Because of their need to furnish accountings to the Government and private insurance companies and a growing awareness of the value of cost control, health care providers began to upgrade the complexity and sophistication of their accounting systems. However, each provider continued to report costs on the basis of its unique location, age of physical plant, and management philosophy. The unsophisticated reimbursement methods employed by the Federal Government also permitted providers to legitimately maximize the amount of reimbursement by the way in which they chose to report their costs.

With the continued rise in health care costs, efforts at cost containment were initiated on several occasions. However, lacking means to effectively compare costs of services delivered by different institutions, the Government has been compelled to reimburse on the basis of costs incurred—there has been no means of determining whether a provider was furnishing health care services in an efficient and cost-effective manner. Recognizing this problem, Congress enacted the Medicare-Medicaid Anti-Fraud and Abuse Amendments in 1977.

The regulations we propose would establish uniform reporting systems for all health services facilities and

organizations that participate in the Medicare and Medicaid programs, including hospitals, skilled nursing facilities, intermediate care facilities, home health agencies, and health maintenance organizations.

The law requires promulgation of regulations to establish a uniform system of reporting for the following types of information for each type of health services facility or organization:

1. the aggregate cost of operations and the aggregate volume of services;
2. the cost and volume of services by functional account (a group of activities involved in providing a particular health care service);
3. rates by category of patient and class of purchaser;
4. capital assets, as defined by the Secretary of Health and Human Services, including (as appropriate) capital funds, debt services, lease agreements used in lieu of capital funds, and the value of land, facilities, and equipment, and;
5. discharge and bill data.

We will implement uniform reporting through several different regulations, since the different types of facilities and different types of data required involve diverse issues and approaches.

When in place, these systems will enable the Department to obtain uniform, comparable data necessary for reimbursement, effective cost containment and policy analysis, assessment of alternative reimbursement mechanisms, and health planning. Adequate and comparable data are not presently available to support these objectives.

If we fail to regulate in this area, we would fail to follow the legislative mandate of the Congress and have no effective means of securing data to permit inter-institutional comparisons of health care costs. Without such comparisons, we cannot judge relative efficiency in health care delivery and we are hampered in our own efforts at health care cost containment.

Alternatives Under Consideration

Within the legislative mandate, certain options are available. A timetable and objectives specified in the legislation limit flexibility in timing and scope of the regulations. Other factors that affect the scope of the regulations include the Department's concern with minimizing reporting burden and eliminating duplicative and overlapping data requirements placed on the provider, while meeting the intent of the legislation.

For the regulation implementing reporting of data on cost, use, and

capital assets for hospitals, the major options we chose were:

1. To merge, to the extent possible, Departmental data collection activities (e.g., Medicare and Medicaid cost reporting, hospital facilities components of the Cooperative Health Statistics Systems funded by the Public Health Service) to coordinate reporting requirements and minimize the burden on the providers. (This will shift some of the burden to HCFA, since it will have to pass the information on to the Public Health Service.)

2. To reduce cost reporting requirements for small facilities (less than 4,000 admissions annually) in order to minimize the burden on such facilities. (This will have only slight effect on the comparability of the data obtained through the system.)

3. To limit, to the extent possible, the level of detail required to ascertain the cost of services provided (e.g., sub-classification of salaries, employee benefits, supplies) for specified cost centers, in an effort to decrease the reporting burden. This will also reduce the accuracy of the data derived, but we are unable to directly correlate the loss of accuracy with the significant savings that will result from limiting the degree of detail in these areas.

For the regulation implementing the collection of hospital bill and discharge data, the major issues under consideration are:

1. Confidentiality considerations regarding data collected on non-federally financed patients and the physicians treating them. In order to assure the adequacy of sampled data, such data must be collected on a random basis from the entire patient population, without distinction as to source of payment. Of necessity, this will mean that some of the discharge and billing data obtained will pertain to non-Federal patients and their physicians. The data collected on Federal patients is required in order to verify the accuracy of charges made, but in the case of non-Federal patients no such consideration exists. Appropriate safeguards will be required to avoid inappropriate disclosure and to assure that data collected are not identified with a patient or practitioner to any greater degree than required for completion of the study.

2. Method of collecting and processing the bill and discharge data.

3. Appropriate areas of reporting for industries with differing methods of patient care, such as home health agencies and skilled nursing facilities.

4. Appropriate "discharge data" from such institutions as health maintenance

organizations which primarily treat ambulatory patients.

Summary of Benefits

Sectors Affected: All hospitals, skilled nursing facilities, intermediate care facilities (nursing and personal care facilities), home health agencies, health maintenance organizations and other types of health services facilities and organizations participating in the Medicare and Medicaid program; patients in these facilities or those being treated by them; physicians and other health care practitioners reimbursed through Medicare and/or Medicaid programs; and the Department of Health and Human Services.

In 1979, the Nation spent an estimated \$212.2 billion, or \$943 per person, for health care. This expenditure included \$54.4 billion in premiums to private health insurance, \$60.9 billion in Federal payments, and \$30.5 billion in State and local government funds.

Since 1965, health care costs have averaged a 12.2 percent increase annually, while the Gross National Product (GNP) increased an average 9.2 percent annually over the same period. The result has been that health care costs, which accounted for 6.1 percent of the GNP in 1965, now account for 9.0 percent. This cost spiral has affected the entire economy. Better management practices and health care cost containment are expected to decrease the health care portion of the GNP and expand the resources available for other sectors of the economy. The Department of Health and Human Services will also benefit through a reduction in the rate of cost increase and improved data for comparability and health planning. Providers will benefit through improved management techniques potentially resulting from comparisons of data from their institution and others across the Nation.

It is HCFA's judgment that cost savings will be realized by the health care industry and the general public by implementation of uniform bill and discharge reporting systems. Most patients at health care facilities today have their treatment costs defrayed in whole or part by a third party (Federal, State, and local government, private insurance, employer, etc.) and most of these payors require billing data to be presented in their own specified formats. If a format can be devised that gains universal acceptance, health care providers are expected to save considerable staff time with consequent reductions in the costs of administering health care facilities. In addition to bill data, numerous Federal and State

agencies as well as other organizations require discharge information to be reported separately from the billing process. As with bill data, providers are required to report discharge data according to the specifications of the data user. Most discharge data sets duplicate over 60 percent of the data reported on the bill. HCFA is working toward improving the collection and management of these two data sets. Alternative reporting mechanisms are now being investigated.

We are designing uniform reporting systems with the intent of reducing and eliminating costly multiple collection and processing of duplicate data and with the intent of improving the utility of the data through consistent and compatible definitions and codes. It is anticipated that providers will prepare a single data set instead of the several reports for multiple State and Federal agencies required in the past. We expect the data collected through these systems to result in further cost savings because they will provide the basis for reimbursement reform, better health policy analysis, improved health planning, and better control over expenditures by providers for supplies, services, and capital. Cost savings should also be realized by individuals, since promotion of greater efficiency and less staff time for furnishing discharge and bill reports data should aid in curbing the increases in health care costs.

Summary of Costs

Sectors Affected: All hospitals, skilled nursing facilities, intermediate care facilities (nursing and personal care facilities), home health agencies, health maintenance organizations, and other types of health services facilities and organizations participating in the Medicare and Medicaid programs; patients in these facilities and those being treated by them; and HHS.

Based upon our Regulatory Analysis of costs of implementing a uniform reporting system for the hospitals of the Nation, alternatives available range in cost from \$218 million to \$0 in 1979 dollars. The former figure represents costs of conversion to uniform accounting and reporting systems, a situation not required by the Congress or HCFA. The latter figure represents no conversion of any sort, which is contrary to legislative mandate. We have chosen an alternative that we estimate will cost \$56 million to implement, or approximately \$8,000 for each of the 7,000 hospitals in the Nation. This figure includes a \$19 million (\$2,700 per hospital) start-up cost, and an

annual cost of \$37 million (\$5,300 per hospital) thereafter. Of these figures, HCFA will share approximately 40 percent of the cost through normal reimbursement mechanisms. A preliminary cost study for implementing uniform reporting for home health agencies has recently been completed for HCFA by the firm of Morris, Davis and Company, certified public accountants. We will undertake similar studies in conjunction with development of other uniform reporting systems.

Related Regulations and Actions

Internal: Medicare and Medicaid cost reporting requirements. Professional Standards Review Organization reporting requirements, and National Center for Health Statistics Cooperative Health Statistics Systems reporting requirements are in effect now. We will incorporate these in the uniform reporting systems.

External: None.

Active Government Collaboration

The Public Health Service has cooperated with HCFA to merge their hospital facilities' data collection requirements into the proposed uniform cost and utilization reporting systems.

Timetable

- NPRM, Uniform Cost Reporting for Skilled Nursing Facilities and Intermediate Care Facilities—Fiscal Year 1983.
- NPRM, Hospital Discharge and Billing Data—Fiscal Year 1983.
- NPRM, Skilled Nursing facility/Intermediate Care Facility Discharge and Billing Data—To be determined.
- NPRM, Home Health Agency Cost and Utilization—To be determined.
- Draft Cost and Regulatory Analysis—To be determined.
- NPRM, Home Health Agency Discharge and Billing—Fiscal Year 1984.
- NPRM, Health Maintenance Organization Cost and Utilization—Fiscal Year 1984.
- NPRM, Health Maintenance Organization Discharge and Billing—Fiscal Year 1984.
- Final Rule, Hospital Cost and Utilization Reporting—January 1981.
- Final Cost and Regulatory Analysis—January 1981.

Available Documents

- Uniform Reporting Systems for Health Services Facilities and Organizations, NPRM—44 FR 4741, January 23, 1979.
- Public Comments Responding to NPRM.

A Guide to Hospitals for Planning and Producing the Reports for the System for Hospital Reporting (SHUR)—September 30, 1979.

Annual Hospital Report (Manual and Forms)—February 20, 1980.

NPRM and Draft Regulatory Analysis—45 FR 17894, March 19, 1980.

Public Comments Responding to NPRM.

Copies of these documents may be reviewed in the Department's offices at Room 309G, Humphrey Building, 200 Independence Avenue, S.W., Washington, DC (202) 245-7890.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Neighborhoods, Voluntary Associations, and Consumer Protection

Lead-Based Paint—Chewable Surfaces (24 CFR Part 35)

Legal Authority

Lead-Based Paint Poisoning Prevention Act, Title 3, § 302, 42 U.S.C. § 4801 *et seq.*

Reason for Including This Entry

This proposal has the potential for a major economic effect on the economy, with costs and benefits which may exceed \$100 million per year.

Statement of Problem

The Department of Housing and Urban Development (HUD) is required by the Lead-Based Paint Poisoning Act of 1971 to establish procedures to eliminate the "immediate hazard" of lead-based paint poisoning in all federally owned housing, and in housing which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary of HUD. Further, HUD is to ensure notification to purchasers and tenants of pre-1950 HUD-insured or HUD-assisted housing of the hazards, symptoms, and treatment of lead poisoning. The percentage of lead in paint has dropped very sharply in recent years as substitutes for lead have become available. Thus, the

heaviest lead concentrations occur in older structures. Because of difficulties in measuring lead content of paint already applied to interior surfaces, current HUD regulations (24 CFR Part 35) presume that any loose, peeling, or chipping paint constitutes an immediate hazard, and require that such surfaces be made intact; for example, by scraping and repainting with two coats of non-lead-based paint. While this procedure removes the most obvious hazards, there is concern that children may ingest lead by chewing intact surfaces containing high levels of lead. Also, there is concern that levels of lead used in post 1950 paint may constitute a health hazard, such as "Lead poisoning," which might lead to mental retardation. Reliable estimates of the number of cases of lead poisoning are not available, but the Center for Disease Control found "undue lead absorption" in over 7 percent of preschool children screened in 1977. Also, according to a legal opinion from the Office of the General Counsel at HUD, the legislative history of paragraph 302 of the Act indicates that Congress intended that intact lead-based painted surfaces be included as part of the "immediate hazard."

Alternatives Under Consideration

We are considering the following alternatives and subalternatives:

- (A) Institute no regulatory change; or
- (B) Redefine "immediate hazard" to include intact leaded chewable surfaces. Within alternative (B) several subalternatives exist: (1) What level of lead in applied paint is considered acceptable? Currently, non-intact paint is presumed to be lead-based, and thus there is no definition of what level of lead is considered hazardous. In fact, until recently, there was no consistent method of measuring lead content in applied paint. More stringent standards involve greater costs while causing more lead to be removed from a dwelling.
- (2) What surfaces are considered accessible to children and therefore potentially chewable? The highest incidence of lead poisoning occurs in preschool children, and there must be some definition of whether potentially chewable surfaces are restricted to protruding surfaces like window sills or door jambs, and what height above the floor is considered accessible to young children. Once again, the more all-inclusive the definition of what is considered chewable, the more costly will be the required removal of paint, and the greater the amount of lead removed.
- (3) What methods of treatment are necessary to render a chewable surface acceptable—i.e., to remove the

immediate hazard? Currently, surfaces are treated by scraping or sanding and repainting, but removal of the "immediate hazard" could require total removal of paint down to the bare wood, or the application of an impenetrable barrier. The ANPRM will solicit public comment on all of these issues. Obviously, the more thorough the required treatment, the more costly will be the requirement, and the more certain will we be that hazardous lead has been removed.

Summary of Benefits

Sectors Affected: Occupants of public housing and other HUD-assisted properties (particularly children who are susceptible to elevated blood lead levels); and painting contractors.

The linkages between the existence of paint in homes, potential for ingestion by children, the elevation of blood lead, and the emergence of symptoms of lead poisoning are not well understood. However, elevated blood levels are correlated with higher levels of lead in dwellings. What is known is that since 1970 the percentage of children with elevated blood lead has declined substantially, but lead poisoning has not disappeared.

Benefits to be received from reducing the number of cases of lead poisoning include the avoidance of costs of medical treatment, the reduction in the occurrence of mental retardation traced to this source, and the avoidance of suffering by victims of lead poisoning. It is very difficult to place numerical estimates on these benefits, but the Regulatory Analysis will examine the available evidence.

Thus far, the estimates of benefits must remain qualitative. We expect that the establishment of a new requirement for paint removal and repainting will benefit painting contractors through the extra business generated, but quantification of this benefit will not be possible until the Regulatory Analysis is complete.

Summary of Costs

Sectors Affected: Public housing authorities; owners and private lessors of HUD-assisted housing; and HUD.

Costs of lead paint abatement depend heavily on the definitions of immediate hazards of unacceptable lead levels in applied paint, the percentage of units subject to inspection, the type of inspection performed, the abatement technique used, and the definition of chewable surface. Currently, loose, peeling, and chipping paint is presumed

to pose a hazard if it occurs in HUD-associated housing, and such surfaces must be made intact. Alternative (B), above, involves detection of lead paint in which lead exceeds allowable levels, as well as removal and refinishing of chewable surfaces. Estimates in 1977 indicated the cost might be at least \$1,000 per dwelling unit for a particular set of definitions (removal of all lead paint from the interior of a typical dwelling built prior to 1940, where lead paint is defined as concentration greater than 2 milligrams per square centimeter). Preliminary estimates of aggregate costs were about \$600 million for HUD-associated housing. Actual costs could be higher or lower than this depending on the choices among the subalternatives under alternative (B). Likewise, the total cost would depend on the number of units covered by the regulations, and this, too, is open to a range of the alternatives in the Regulatory Analysis. We will examine these costs, and how they vary according to the definition we might adopt.

Related Regulations and Actions

Internal: None.

External: Unknown.

Active Government Collaboration

None.

Timetable

ANPRM—December 1980.

Public Comment Period—60 days following publication of ANPRM.

NPRM—July 1981.

Draft Regulatory Analysis—Will accompany NPRM.

Public Comment Period—60 days following publication of NPRM.

Final Rule—December 1981.

Final Regulatory Analysis—Will accompany Final Rule.

Available Documents

None.

Agency Contact

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

Mandatory Safety Standards for Surface Coal Mines and Surface Areas of Underground Coal Mines (30 CFR Part 77*)

Legal Authority

Federal Mine Health and Safety Act of 1977, 30 U.S.C. § 811.

Reason for Including This Entry

The Mine Safety and Health Administration (MSHA) plans to include additional requirements in its existing regulation and believes that initial industry costs to comply may exceed \$50 million.

Statement of Problem

In 1978 approximately 417 million tons of coal, from a total figure of 660 million tons mined, was taken from surface mines, and we expect this tonnage to increase.

It is estimated there are 89,000 miners currently working in the Nation's surface coal mines and surface areas of underground mines. MSHA statistics for 1978 reveal a fatality rate of .04 and an injury rate of 4.08 per 200,000 hours worked (per 100 fulltime employees). The primary causes of fatalities are from haulage and machinery accidents.

MSHA has reviewed all existing safety standards for surface coal mines and comments received from industry and labor representatives on regulations the agency initially proposed in 1977, and has determined that there is a need to strengthen and clarify certain provisions. In addition, in light of E.O. 12044, some subparts and sections of the current regulations need reorganizing in order to make them easier to use by operators and inspectors. We also recognize the need to expand the existing regulations to include additional requirements for illumination of work areas; guarding of electrical equipment; examination and testing of high-voltage circuit breakers; protection of direct current circuits; protection of low- and medium-voltage alternating current circuits; protection of electric wiring and equipment; handling of energized trailing cables and portable feeder cables; mine maps; ground control; and locations for explosives magazines. Where appropriate, we will simplify sections and delete irrelevant provisions.

Alternatives Under Consideration

These amendments and revisions were first proposed in January 1977. The proposal would have revised all the

safety requirements for surface coal mines and surface areas of underground coal mines. MSHA has evaluated the proposal and comments received in response to that proposal. Three alternatives are available: (A) Develop a final rule based on the 1977 proposal. This approach would sacrifice revisions which reflect new technology and further public comment on these revisions. (B) Separate the 1977 proposed rule into several sections such as electrical and nonelectrical safety requirements. This approach would allow MSHA to address high priority areas first but would diminish our ability to consider all the surface safety regulations as one cohesive package. (C) Repropose the entire Part. This would allow a total review and publication of all MSHA's surface coal mining safety regulations in one cohesive package.

MSHA had decided to repropose the entire Part as described above, within the framework of the Federal Mine Safety and Health Act of 1977 and its requirements. However, at this time, MSHA is leaning toward the second alternative. The aspects of publishing such a large package make the public comment process cumbersome and a burden for small business.

Summary of Benefits

Sectors Affected: Surface coal mining and surface areas of underground coal mines; miners who work in these areas; representatives of miners, which according to Part 40 can include any person or organization which represents two or more miners at a coal or other mine; and MSHA.

MSHA expects that these improved standards will help reduce fatalities and injuries of miners. This reduction in fatalities and injuries will decrease certain costs to surface mine operators, e.g., productivity lost because of accidents, and lower insurance premiums. In addition, the increased readability of the standards will benefit mine operators and MSHA inspectors. In some instances, we will include specific requirements in the standards rather than incorporating other documents by reference. This will provide clarity for operators, miners, and their representatives.

Summary of Costs

Sectors Affected: Surface coal mining and surface areas of underground coal mines.

When we first proposed these regulations in January 1977, our economic estimates revealed that it would cost approximately \$44 million for the industry to comply with the proposal. The principal costs relate to additional

equipment purchases to meet requirements for low-resistance portable feeder cables; protection of direct current circuits; guarding of high-voltage equipment; examination and protection of high-voltage circuit breakers; protection of low- and medium-voltage alternating current circuits; illuminations; guarding of electrical equipment; and protection of electric wiring and equipment. 1979 estimates were as follows: illumination—\$20 million; guarding of electrical equipment—\$16 million; protection of electric wiring and equipment—\$2.2 million; high-voltage circuit breakers, examination—\$6 million; energized trailing cables—\$9 million; protection of direct current circuits—\$2.0 million; guarding of high-voltage equipment—\$3.2 million; and booms and masts, warning devices—\$3.5 million.

The initial estimate does not take into consideration industry expansion and overall increases caused by inflation. Industry costs to comply may well exceed \$50 million in the first year (1976 dollars). Approximately 90 percent of the costs are associated with one-time equipment purchases. Therefore, we expect costs to decline drastically for the second year. The burdens of small business will be given special consideration and assessed accordingly.

Related Regulations and Actions

Internal: MSHA has regulations setting forth requirements for underground coal mines (30 CFR Part 75). MSHA is working on safety and health standards for construction work on mine property (30 CFR Part 110).

External: None.

Active Government Collaboration

None.

Timetable

NPRM—December 30, 1980.

Public Comment Period—60 days following NPRM.

Public Hearings—Broken up by sections of proposal. Locations and dates have not been finalized.

Regulatory Analysis—Will accompany NPRM.

Final Rule—1982.

Available Documents

NPRM—42 FR 2800, January 13, 1977.

Comments on first NPRM (see Agency Contact).

Agency Contact

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DOL-MSHA

Regulations Setting Forth Requirements for Safety and Health Training for Mine Construction Workers (30 CFR Part 48)

Legal Authority

Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 811 and 815.

Reason for Including This Entry

The Department of Labor has included this entry because of great public interest in the regulation.

Statement of Problem

Preliminary industry estimates reveal that there are approximately 70,000 to 90,000 employees engaged in mine construction work, and the Bureau of Labor Statistics' data reveal that construction is a high hazard industry. In 1977, based upon Occupational Safety and Health Administration (OSHA) data, the incidence of accidents and injuries for all workers in the private sector was 9.3 per 100 full-time workers; however, it was 15.5 per 100 for construction workers. The Mine Safety and Health Administration (MSHA) has no separate accident and injury statistics, to date, for construction workers on mine property. However, we do know that there were approximately 18 mining fatalities related to construction in 1979. Section 115(d) of the 1977 Federal Mine Safety and Health Act requires that the Secretary of Labor promulgate appropriate standards for safety and health training for construction workers. These regulations will require that all construction workers on mine property be appropriately trained by their employers in the safety and health hazards of their jobs. Such training should help construction employees avoid accidents in the mines, thereby resulting in a reduced accident incidence rate for construction workers.

Alternatives Under Consideration

MSHA is considering the following alternatives: what amount of training we will require (current surface regulations require 24 hours; however, MSHA is uncertain as to whether that amount of time is appropriate for construction workers); how often (given the mobility of the construction workforce); if there is a need for refresher training; and what training can be substituted for that which the regulation may require (for example, apprenticeship training).

MSHA believes that an important consideration in the development of the regulation will be to determine exactly what kind of training employers are currently providing, so that appropriate credit can be given for such training to avoid any duplication of industry and labor training effort. MSHA is engaging in consultations with both labor and industry to get this information.

Summary of Benefits

Sectors Affected: Mine construction industry and employees; mining industry; and miners.

MSHA expects that these regulations will provide a strong framework for reducing injuries, illnesses, and fatalities which are associated with mine construction work. Our long-term goal is to reduce measurably the hazards related to construction in the mining workplace. We anticipate that the 15.5 percent incidence rate previously mentioned can be reduced for the 70,000 to 90,000 construction workers on mine property. A reduction in the incidence rate will benefit the industry in the form of higher productivity and lower accident-related costs. In addition, a reduced incidence rate will result in fewer injuries, illnesses, and fatalities, which will benefit construction employees, as well as miners exposed to the hazards created by ongoing construction work.

Summary of Costs

Sectors Affected: Mine construction industry; and the mining industry.

MSHA is developing estimates for the costs of complying with these regulations. When MSHA promulgated Part 48, the Agency developed model training programs to help operators comply with the regulations. MSHA will consider this approach for construction training as an aid to minimize the cost of small businesses developing their own training programs. Since MSHA is only in the drafting stage with respect to this regulation, the cost estimates will depend, in large part, upon the final make-up of the regulation, including categories of training required, hours of training, etc.

Related Regulations and Actions

Internal: MSHA is developing safety and health standards for construction work on mine property (30 CFR Part 110). MSHA has existing mandatory safety and health training regulations for miners (30 CFR Part 48). OSHA has construction safety and health standards (29 CFR Part 1926, and portions of 29 CFR Part 1910), some of which require training. MSHA has regulations which set forth criteria for

identifying those independent contractors who will be operators within the meaning of § 3(d) of the Mine Act, 30 CFR Part 45.

External: None.

Active Government Collaboration

None.

Timetable

ANPRM—February 1981.

NPRM—1981.

Regulatory Analysis—We are unsure at this time if we will prepare one.

Public Comment Period—ANPRM—45 days following publication; NPRM—60 days following publication.

Public Hearings—Will be held after the NPRM is published. Dates and locations of the public hearings to be announced at that time.

Final Rule—1982.

Available Documents

None.

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DOL—MSHA

Requirements for Construction and Maintenance of Impounding Structures and Tailings Piles at Metal and Nonmetal Mines (30 CFR Parts 55.20-10*, 57.20-10*, and New Parts not yet Specified)

Legal Authority

Federal Mine Health and Safety Act of 1977, 30 U.S.C. § 811.

Reason for Including This Entry

The Mine Safety and Health Administration (MSHA) thinks these regulations are important because current regulations are inadequate to ensure safe construction and maintenance of metal and nonmetal waste-impounding structures. We expect the regulation to have over \$50 million impact annually on the industry.

Statement of Problem

There are approximately 680 metal and nonmetal tailings dams in the United States. Based upon a recent survey, MSHA estimates that 15 to 20 percent of the existing structures pose some form of potential hazard, which might result in loss of life to both workers at the mines and members of

the public, or damage to the environment. We developed and published improved standards governing impoundments and waste piles at coal mines following the coal mine dam failure at Buffalo Creek in 1972, which resulted in many injuries and fatalities. However, because of recent waste dam failures at metal and nonmetal mines and the continuous potential for loss of life, MSHA decided that there is a problem related to the construction of new and existing impounding structures as well, and that improved standards are necessary. Existing regulations are very general, and unenforceable as written. Located at 30 CFR 55, 56, and 57.20-10, they read as follows: "Mandatory: if failure of a water or silt retaining dam will create a hazard, it shall be of substantial construction and inspected at regular intervals."

MSHA anticipates that the improved standards will result in a reduction of injuries at the mine site and will minimize the chances of water and waste from the ore spilling over into the surrounding public environment and creating the possibility of physical damage to the land and its occupants.

Alternatives Under Consideration

MSHA has considered the following major alternatives:

(A) The manner in which we will require metal and nonmetal operators to construct new dams, i.e., how they should be designed and the materials used in construction. The type and specificity of requirements for these structures will affect the cost of compliance to the industry to comply. Although structures will, of course, have to vary depending upon the nature and geography of the mine being served and the type of waste product involved, requirements which are specific and yet allow for operator flexibility could possibly result in more consistent enforcement by MSHA and greater miner safety. In other words, these requirements will give operators better notice of what their responsibilities are with respect to waste dams, and MSHA inspectors will have better guidelines upon which to base citations for violations.

(B) Whether or not there will be a delayed effective date to allow existing facilities to comply.

(C) Whether certain existing facilities will be exempted from or receive special treatment under the new requirements. It might be feasible to include a grandfather clause in the regulation which will exempt certain existing facilities from the requirements of the standard. However, since the regulations only apply to dams of

specified size and larger, there will be no need to provide special exemptions for small mines.

(D) Whether metal and nonmetal operators will have to submit plans for the construction of waste and impoundment structures. These plans would be approved by the appropriate Department of Labor, Metal and Nonmetal Mine Safety and Health District Manager. This requirement would increase the paperwork burden on the affected industry; however, it would ensure that all new facilities are constructed in the proper manner.

(E) What the applicability will be of the Department of the Army's Corps of Engineers' requirements related to impounding construction. MSHA adopted their size criteria, in large part in this proposed regulation.

(F) Whether to allow the existing regulation to remain in its very general form, and do nothing at all. At this time, it appears that this alternative would not do anything to help solve the problem. Because the existing regulation contains no general guidelines or performance standards, the quality of waste dams varies greatly.

MSHA is considering whether to appoint an advisory committee composed of members from labor, industry, and the public to review these and other related issues in order to arrive at the best approach possible to alleviating the present problem.

Summary of Benefits

Sectors Affected: Miners working in mines having waste dams; persons who live in close proximity to such mines; the metal and nonmetal mining industry (except fuels); the general public; and State and local governments.

Although there are not current statistics on the number of injuries resulting from dam failures at the approximately 680 operating metal and nonmetal mines, the dam failure at the Buffalo Creek coal mine killed 123 persons and left thousands in the surrounding community homeless. At least four metal and nonmetal failures have caused damage to the surrounding public environment; waste water and mud were released not only into the lands, but also into the source of the local water supply. We anticipate that this regulation, in whatever form we propose it, will reduce injuries, fatalities, and environmental damage associated with dam failures by setting forth more stringent requirements for waste dam construction. This would also benefit State and local governments that bear part of the costs in dealing with dam failures.

Summary of Costs

Sectors Affected: Metal and nonmetal mining industry (but not fuels); States and localities which conduct mining activities; miners; and representatives of miners (any person or organization which represents two or more miners at a coal or other mine).

MSHA is in the process of developing data about the economic impact on the metal and nonmetal mining industry. The final cost estimates will have to take into consideration vast differences in types of mines, types and amounts of waste products involved, and the geographical terrain. In addition, the extent to which existing facilities can comply with the regulation with only minor changes will affect the cost. We have recently contracted to determine the cost impact of the regulation. The contract will assist in our decision to proceed with the regulations in their present form. We do expect them to qualify as a major regulation under the Department of Labor's Guidelines for Improving Government Regulations (44 FR 570, January 26, 1979), inasmuch as cost of implementation to the mining industry is expected to exceed \$50 million. Operators of metal and nonmetal mines which have waste dams would be most affected by the costs of the regulation. We have prepared preliminary risk assessments of the currently prevailing situation with regard to impounding structures, and we will obtain more detailed information from the contract.

Related Regulations and Actions

Internal: MSHA currently has surface coal mine safety standards for refuse piles (30 CFR 77.214-217). MSHA has existing metal and nonmetal safety standards which regulate impounding structures (30 CFR 55.20-10; 30 CFR 56.20-10; 30 CFR 57.20-10).

External: The Department of the Army has authority, through the Corps of Engineers, to regulate dams and their construction on public property under P.L. 92-367, 86 Stat. 506-507. The Department of the Interior, Office of Surface Mining, has authority to regulate coal mine dams and waste piles under the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, 91 Stat. 445.

Active Government Collaboration

None.

Timetable

ANPRM—Fall 1981.

NPRM—Winter 1981-82.

Public Comment Period—March 30-May 30, 1982.

Public Hearing—September 30, 1982.

Final Rule—January 30, 1983.
Regulatory Analysis—Will accompany NPRM.

Available Documents

None.

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DOL-MSHA

Review of Safety and Health Standards Applicable to Metal and Nonmetal Mining and Milling Operations (30 CFR Parts 55*, 56*, and 57*)

Legal Authority

Federal Mine Health and Safety Act of 1977, 30 U.S.C. § 811.

Reason for Including This Entry

The Mine Safety and Health Administration (MSHA) believes this rule is important because it is a major review of all standards affecting metal and nonmetal mines. This review is important to the industry because MSHA will be reviewing the standards with an eye towards reducing reporting requirements, deleting unnecessary standards, and simplifying existing standards.

Statement of Problem

In accordance with E.O. 12044, MSHA is currently undertaking a thorough review of all existing metal and nonmetal health and safety standards. The Agency committed itself to this review when it published its final rule on August 17, 1979, which converted former metal and nonmetal advisory standards to mandatory standards. The document stated that "MSHA intends to conduct a comprehensive study of all the health and safety standards contained in 30 CFR Parts 55, 56, and 57 in order to assess their continued applicability and effectiveness." More specifically, MSHA is undertaking this review in order to update and upgrade existing standards and to consider eliminating, consolidating, clarifying, simplifying, or reorganizing provisions where appropriate. MSHA's review is also covering changes in technology and economic conditions and other factors which affect the applicability of existing standards. This rulemaking project is covering all of the safety and health

standards included in Parts 55, 56, and 57, which are divided into sections relating to such areas as fire prevention and control; storage, transportation, and use of explosives; use of equipment; and electricity.

Alternatives Under Consideration

The Agency published an ANPRM (45 FR 19267, March 25, 1980), and solicited public comment on problems related to existing standards and on the order in which MSHA should review the standards. MSHA received requests to extend the comment period and did so on June 6, 1980 (45 FR 38087, June 6, 1980), allowing an additional 60 days for recommendation. MSHA has received over 100 suggestions from the mining community and interested public.

Suggestions we received reveal that current standards need to be (1) reorganized to facilitate their use by the metal and nonmetal mining community; (2) simplified and clarified so that they can be easily understood; and (3) deleted if outdated, duplicative, or overlapping with other MSHA standards. The standards are currently organized in terms of general hazards covered, such as electrical, explosives, etc. However, many commenters stated that the existing sections are not comprehensive in that standards covering electrical hazards appear in several sections. The commenters felt that combining all associated standards together would enable operators to more easily understand their responsibilities.

Other standards may no longer be applicable because of changes in technology. The current regulations incorporate by reference many other requirements such as National Fire Protection Code Standards, Threshold Limit Values, American National Standards Institute requirements, etc., some of which may be outdated. In the review, MSHA will pay particular attention to the incorporations by reference. In addition, commenters recommend that it will be helpful to the metal and nonmetal mining community to include a more detailed index with cross-referencing to other MSHA standards, as well as other style and format changes. Commenters stated that certain standards included duplicative requirements such as training for miners. In light of MSHA's comprehensive training standards, MSHA is now reviewing suggestions and deciding priorities for review.

Summary of Benefits

Sectors Affected: Metal and nonmetal mining industry (except fuel); and miners in these industries.

This review will benefit the metal and nonmetal mining community because it will result in improved safety and health standards. In addition, we will revise or revoke outdated standards; clarify those standards which are confusing and delete standards which overlap. These actions will make it easier for metal and nonmetal operators to comply with MSHA's standards. In addition, a deletion of duplicative and outdated standards may result in a reduction of operator costs associated with compliance.

Summary of Costs

Sectors Affected: Metal and nonmetal mining industry (except fuel).

MSHA will consider the effect of these regulations on small businesses and make a special effort to minimize recordkeeping and compliance burdens on these businesses. It is important to note that the majority of the businesses affected by these regulations are small businesses. There may be additional costs associated with capital outlays for some equipment due to new technological advances; however, MSHA is hopeful that the review will actually result in a reduction in recordkeeping costs and a deletion of duplicative requirements which may help offset any increased costs.

Related Regulations and Actions

Internal: All existing standards covering Parts 55, 56, and 57, as of January 1, 1980.

External: None.

Active Government Collaboration

None.

Timetable

Notice of MSHA decision of priorities—June 30, 1981.

Open Conferences (Public Meetings)—June through October 1981.

NPRM (related to priority revisions)—January 1982.

Initial Regulatory Analysis (including Initial Regulatory Flexibility Analysis)—October 1981, as appropriate.

Public Comment Period—60 days following publication of NPRM.

Public Hearings—June 1982, tentative.

Final Rule—To be determined.

Available Documents

All existing standards in 30 CFR Parts 55, 56, and 57, as of January 1, 1980.

ANPRM (45 FR 19267, March 25, 1980 and 45 FR 38037, June 6, 1980).

Public comments received in response to ANPRM and copies are available from Agency Contact on request. Copies

are available by mail at a cost of 10 cents per page for copying.

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DOL—MSHA

Safety and Health Standards for Construction Work at All Surface Mines and Surface Areas of Underground Mines (30 CFR Part 110)

Legal Authority

Federal Mine Health and Safety Act of 1977, 30 U.S.C. § 811.

Reason for Including This Entry

The Department of Labor (DOL) believes there is significant public interest in this regulation.

Statement of Problem

Construction work at the Nation's surface mines and surface areas of underground mines constitutes approximately 10 to 15 percent of total construction activity and exposes approximately 70,000 to 90,000 persons per year to safety and health hazards associated with construction. In 1977, based upon Occupational Safety and Health Administration (OSHA) data, the incidence of accidents and injuries for all workers in the private sector was 9.8 per 100 fulltime workers; however, it was 15.5 for construction workers. In addition, although the Mine Safety and Health Administration (MSHA) has no separate accident and injury statistics, to date, for construction workers on mine property, we do know that there were approximately 18 mining fatalities related to construction in 1979. MSHA is currently in the process of developing complete injury, illness, and fatality data for construction workers on mine property.

Prior to March 9, 1978, construction contractors performing work at metal and nonmetal mines were subject to OSHA's construction standards. On that date, the Mining Enforcement and Safety Administration, which was transferred from the Department of the Interior (DOI) to the Department of Labor became MSHA and assumed jurisdiction over industry workers on all surface mine property. Currently, MSHA applies its existing surface safety and health standards (Parts 55, 56, 57, 71, and 77) to construction activity.

However, § 101(a)(8) of the Act requires that "The Secretary shall, to the extent practicable, promulgate separate mandatory health or safety standards applicable to mine construction activity on the surface." If MSHA does not publish comprehensive regulations which address the hazards associated with all phases of construction work, protection will be inadequate for this important segment of the construction industry.

Alternative Under Consideration

MSHA has circulated for public comment an ANPRM which contained virtually all of OSHA's current requirements related to construction. Requirements for personal protective equipment, fire protection, welding and cutting, steel erection, excavation, trenching, shoring, and blasting are included. This alternative (publication of comprehensive regulations similar to those of OSHA) is endorsed by the majority of those commenting on the ANPRM and will provide the least disruption to that portion of the industry which prior to March 9, 1978 was subject to the jurisdiction of OSHA while working on surface mine property.

Other alternatives include:

(A) Which edition of the American Conference of Governmental Industrial Hygienists' "Threshold Limit Values of Airborne Contaminants" should be incorporated into the standard governing exposure of employees to gases, vapors, fumes, dusts, and mists at construction sites. OSHA uses the 1970 edition, but the 1978 edition is more current and imposes more stringent requirements, resulting in reduced employee exposure to some contaminants.

(B) The substitution of certain requirements from 30 CFR Parts 71 and 77, regarding construction activities (e.g., a requirement that all electrical work be performed by qualified and certified persons), for related OSHA requirements. This would retain certain practices currently existing at coal mine construction sites.

Summary of Benefits

Sectors Affected: Mine construction industry and employees; the mining industry; miners; and representatives of miners (any person or organization which represents two or more miners at a coal or other mine).

The use of OSHA's standards will minimize disruption of the construction industry. Use of updated threshold limit values for airborne contaminants would potentially decrease the incidence of occupational illness and its attendant costs.

Summary of Costs

Sectors Affected: Mine construction industry; and the mining industry.

MSHA is developing the estimates for the costs to industry of complying with these regulations. Although these are new regulations for MSHA, they will not represent new requirements for a large segment of the construction industry for the following reason. Prior to the effective date of the Federal Mine Health and Safety Act of 1977, all construction activity in metal and nonmetal mines which was not undertaken by the operator was subject to OSHA's jurisdiction. This was by far the largest portion of construction work at metal and nonmetal mines. Thus, construction contractors working at metal and nonmetal mines had to comply with OSHA's construction standards. However, because most sand and gravel operations are small, most construction activity of this kind at the mine site was undertaken by the operators themselves. These new regulations address many of the same hazards covered by the existing requirements but are new in format and contain some new requirements for most of these operators and may be burdensome at first; however, little sand and gravel construction activity occurs at these mines.

All construction on coal mine property was subject to the jurisdiction of DOI's Mining Enforcement and Safety Administration, this Agency's predecessor. Major construction work is usually performed by large contractors who also perform work at metal and nonmetal mines which is currently subject to OSHA's standards. Therefore, these regulations will not be new to these contractors.

Because MSHA's draft standards are in large part OSHA's current construction regulations, and because the standards address the same hazards as those addressed by MSHA's standards for surface mining, these standards will have a minimum impact on the methods by which construction contractors do business. However, if MSHA does decide to incorporate the latest edition of the "Threshold Limit Values of Airborne Contaminants," there could be increased costs associated with reduced employee exposure levels.

Related Regulations and Actions

Internal: MSHA currently has coal mine surface construction regulations (30 CFR Part 77). OSHA has regulations which govern construction activity (29 CFR 1926 and portions of 29 CFR 1910). MSHA is coordinating all aspects of this

rulemaking with OSHA. MSHA has regulations which set forth criteria for identifying those independent contractors who will be operators within the meaning of § 3(d) of the 1977 Act (30 CFR Part 45). MSHA is also drafting regulations setting forth requirements for safety and health training for mine construction workers (30 CFR Part 48).

External: None.

Active Government Collaboration

None.

Timetables

NPRM—January 1981.

Regulatory Analysis—If required, a draft will be available with the NPRM.

Public Comment Period—60 days after NPRM.

Public Hearings—February–March 1981. Various locations to be announced.

Final Rule—September 1981.

Available Documents

ANPRM—44 FR 52258, September 4, 1979.

Comments received in response to ANPRM (available through Agency Contact).

OSHA Standards—44 FR 8575, February 9, 1979 and 44 FR 20940, April 6, 1979.

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DOL—Occupational Safety and Health Administration

Generic Standard for Occupational Exposure to Pesticides During Manufacture and Formulation (29 CFR Part 1910)

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) has determined that this regulation is necessary for the immediate protection of workers employed in the manufacture and formulation of pesticides. Numerous incidents of harmful employee exposures to a variety of pesticides have already been recorded in these industries. The large number of

pesticides being produced in this country, as well as the broad range of toxic effects they produce, suggests that there is a potential for continuing harmful exposures and, thus, a need for employee protection.

Statement of Problem

Approximately 34,000 workers are exposed to toxic substances during the manufacture and formulation of pesticides. Pesticides are biologically active substances which are designed to kill or alter some living organism, usually designated as the target "pest." However, pesticides frequently cause health effects in whatever living organisms are exposed to them, including humans. Extensive evidence in the scientific literature indicates that worker exposure to pesticides results in serious health problems, including severe skin irritation, damage to the liver and kidneys, sterility, lung damage, and central nervous system disorders. In addition, some pesticides cause cancer, genetic changes, and birth defects. Several well-publicized tragedies have occurred in recent years involving the development of adverse health effects in employees who were exposed to pesticides during manufacture and formulation operations (for example, the effects of Kepone on workers in a Virginia plant and the cases of sterility in male workers packaging the pesticide dibromochloropropane (DBCP)). Investigations of these incidents indicate that there is an immediate need for regulatory action by OSHA to reduce the risk of occupational disease in exposed workers.

Alternatives Under Consideration

Mandatory standards may be necessary to protect employees working in the pesticides manufacturing and formulation industries. One alternative is to develop standards for pesticides on a substance-by-substance basis. OSHA currently has permissible exposure limits (standards) for approximately 160 substances (see 29 CFR 1910.1000, Tables Z-1, Z-2 and Z-3) that are used as pesticides. However, the Environmental Protection Agency (EPA) has registered nearly 1,500 pesticide active ingredients which are formulated into almost 40,000 pesticide products; thus, OSHA's current regulations cover only a small percentage of the currently available pesticide products. Therefore, pursuing this alternative would significantly delay extending protection to many employees in these operations and would require a much greater investment of Government time and resources. The Agency currently believes that a generic approach to

regulation—that is, regulation of pesticides as a class of hazardous substances rather than on a substance-by-substance basis—provides basic protection to workers more quickly, and appears to be a more manageable approach for implementation by employers.

OSHA is considering several variations of a generic standard covering employee exposure to pesticides. The basic provisions, in all cases, address emergency situations, worker training, medical surveillance, hygiene practices, housekeeping, and personal protective equipment. The approaches differ primarily in the degree of specification used to describe the required control measures and the methods used to determine whether a specific provision applies to a given pesticide.

At present, we are evaluating three such alternative generic approaches:

(A) This alternative would base requirements for control measures solely on the degree of control that is currently used in each individual workplace. For example, the employer whose employees work in an area where pesticides are manufactured in an enclosed process (one which results in minimal exposure potential for employees) would be required to provide fewer additional control measures than the employer formulating pesticides in open vats (where the potential for employee exposure is great). Only personal protective equipment and respiratory protection devices would be required; no engineering controls (such as local exhaust ventilation) would be specified. All pesticides would be regulated in the same manner under this alternative, with no differentiation with respect to toxicity.

(B) In the second alternative, determination of the application of the various provisions to control employee exposure to a specific pesticide would depend on the toxicity of that pesticide. OSHA would incorporate the toxicity categorization scheme that EPA developed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. § 136 *et seq.*) into this approach. For example, employers who have pesticides in Toxicity Category I (highly toxic) in their workplaces would have to perform housekeeping activities, such as removal of pesticide accumulations on surfaces, more frequently than those with pesticides in Toxicity Category III (slightly toxic). The standard would also include detailed requirements for engineering controls, such as requiring that processes and operations involving

highly toxic pesticides be enclosed and isolated.

(C) This approach would be performance-oriented, and would require the employer to assume responsibility for ensuring that proper control measures are selected and implemented when necessary. Rather than indicating what specific control measures would be required in each case, the standard would require the employer to perform a hazard evaluation and then determine the appropriate control measures on the basis of the hazards found. In making the hazard evaluation, the employer would survey the workplace and make an assessment of the conditions in which his/her employees work. The employer would be required to consider all relevant factors (for example, toxicity, physical state, and current level of control) before implementing controls.

Although OSHA has not determined which alternative it will propose as a standard, the performance-oriented work practices approach (alternative C) seems to be the most appropriate for a generic standard. This type of standard relies heavily on the "good faith" efforts of employers to comply with the intent of the regulation, but it appears to be the most equitable way to deal with the large number of pesticides involved and the range of hazards they produce. The standard would provide immediate protection for all employees in the pesticide industries. OSHA may decide to develop substance-specific standards for the most hazardous pesticides at a later date.

Summary of Benefits

Sectors Affected: Establishments engaged in manufacturing and formulating pesticide active ingredients and products; and workers in these establishments.

Sectors affected by this regulation include, but may not be limited to, establishments classified in Standard Industrial Classification (SIC) codes: 281 (Industrial Inorganic Chemicals), especially 2812 (Alkalies and Chlorine); 286 (Industrial Organic Chemicals), especially 2869 (Industrial Organic Chemicals, not elsewhere classified); and 287 (Agricultural Chemicals), especially 2879 (Pesticides and Agricultural Chemicals, not elsewhere classified). Firms classified in a number of other SIC codes also manufacture or formulate pesticides, although not as a primary product. We estimate at least 4,600 establishments will be affected by this regulation.

The direct benefit we expect from this action is a reduction in the incidence and prevalence of the adverse health

effects in the 34,000 workers that are exposed to pesticides. The standard will also result in indirect benefits, such as reduced costs of adverse health effects to the worker, to industry, and to society. For the worker and his/her family, these costs may include loss of potential earnings because of disability or premature death, medical expenditures (including hospital costs, physicians' fees, and pharmaceuticals), and intangible costs, such as pain and suffering, and family bereavement. The regulation will also result in declining social costs of social security disability insurance, public assistance programs, and Medicaid and Medicare payments. Employers may experience gains in productivity as a result of reductions in employee absenteeism and turnover and from the improved health of employees. OSHA does not, as yet, have estimates of the magnitude of any of these benefits. Because workers will be healthier and have fewer job-related illnesses, workers' compensation premiums may decrease. OSHA is in the process of evaluating the alternative schemes for a Regulatory Analysis, which will be available when the NPRM is published in the Federal Register.

Summary of Costs

Sectors Affected: Establishments engaged in manufacturing and formulating pesticide active ingredients and products; and users of these pesticide ingredients and products.

OSHA is currently estimating the direct and indirect costs of compliance with the alternatives and will make this data available at the time it publishes the proposal.

The pesticide producers and formulators will probably attempt to pass through their increased compliance costs in the form of higher prices for their products to pesticide users. The agricultural sector is the largest user of pesticides, but this standard would indirectly affect many other diverse users, because pesticides are used in many workplaces to control pests.

Related Regulations and Actions

Internal: OSHA promulgated a final standard for control of employee exposure to the pesticide dibromochloropropane (DBCP) on March 17, 1978 (43 FR 11514), and for inorganic arsenic, which is found in some pesticide formulations, on May 5, 1978 (43 FR 19584). The OSHA Air Contaminant Standards (29 CFR 1910.1000) contain maximum permissible limits for about 160 chemicals which may be used as pesticides. All of these specific permissible exposure limits will

continue to apply when the Agency promulgates the generic standard for pesticides.

External: The Environmental Protection Agency (EPA), the Food and Drug Administration of the Department of Health and Human Services, and the Departments of Transportation and Agriculture have programs for regulating the use of pesticides.

Active Government Collaboration

The National Institute for Occupational Safety and Health (NIOSH) has published a "criteria document," a report containing recommendations for controlling occupational exposure to pesticides during their manufacture and formulation. NIOSH is also preparing control technology assessment of the pesticides industries. OSHA has been working with NIOSH to obtain information relevant to the development of an OSHA pesticide standard.

The Environmental Protection Agency (EPA) has the primary Federal responsibility for regulating the use of pesticides in the United States. OSHA has a working relationship with EPA whereby EPA makes available to the appropriate OSHA staff any disclosable information relevant to an OSHA pesticides standard.

The State of California's occupational safety and health program has an active pesticides division. We have established working relationships with the State to exchange information and develop a pesticides data base.

Timetable

NPRM—Summer 1981.

Regulatory Analysis—Spring 1981.

Public Comment Period—

Approximately 30-60 days following NPRM.

Public Hearing—If requested, following public comment period.

Final Rule—Spring 1982.

Final Rule Effective—To be determined.

Available Documents

"Request for Comments and Information—Occupational Exposure to Pesticides," 43 FR 54955, November 24, 1978.

"Criteria for a Recommended Standard . . . Occupational Exposure During the Manufacture and Formulation of Pesticides" (NIOSH-HEW, 1978).

Public docket of the rulemaking record, Docket H-115.

These documents are available for review and copying at the OSHA Technical Data Center, Room S-6212, 200 Constitution Avenue, N.W.,

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DOL—OSHA

Identification and Labeling of Hazardous Materials in the Workplace

Legal Authority

Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) believes this proposed regulation is extremely important because it will allow employees to identify the chemical substances and know the workplace hazards to which they are exposed, thereby enabling them to take actions to better protect themselves from these hazards.

Statement of Problem

Approximately 25 million American workers are currently exposed to toxic chemicals where they work. A 1972 National Institute for Occupational Safety and Health (NIOSH) survey found 85,000 trade name products that are commonly used in the workplace. In 90 percent of the cases neither employer nor employee knew the identity of the chemicals or the hazards of these products. The rapid proliferation of new chemicals increases the number of substances found in the workplace, and consequently increases the number of substances with which employees may be unfamiliar. Without provisions for chemical identification, workers do not know what chemicals they are using and are unaware of the potential hazards. Thus, employees are less able to properly protect themselves and are unaware that they should ask their employers for adequate protection. Furthermore, if chemicals in the workplace are not appropriately identified, it is difficult to determine which chemicals are responsible when occupational diseases occur.

Alternatives Under Consideration

In the May 30, 1980 edition of the *Calendar of Federal Regulations*, the agency presented several alternative standards for consideration. First, the standard was to include an employee training provision. The preliminary evaluation of this compliance activity

revealed difficulties in prescribing appropriate training programs within a regulatory format that would be cost effective. Accordingly, the training provision is no longer under active consideration as a mandatory feature of the proposal. Second, the scope of the standard was limited to chemical industries. However, a substantial number of workers employed in other industries are exposed to significant concentrations of hazardous substances. By narrowing the scope of the standard to the chemical industries, these additional workers would not be afforded adequate protection although they would be exposed to the same recognized hazards. Third, the scope of this standard was limited to chemicals which have already been classified as recognized hazards by other Federal, private, or national organizations. By narrowing the scope of the standard to these recognized hazards, this would eliminate the regulation of many substances for which there is evidence that exposure may represent a hazard. Hence, this alternative is not under active consideration by the Agency. The alternatives we currently are considering are:

(A) All employers whose activities are classified under Division D, major groups 20-39, of the Standard Industrial Classification (SIC) Manual, would be required to identify hazardous chemicals in the workplace. These requirements would include the labeling of containers of hazardous materials, and the provision of hazard warning information to employees, customers, and suppliers. This alternative is based on the assumption that workers in those industries which manufacture, process, handle, or use chemical substances have the greatest potential for serious exposures. In addition, we also would regulate employers who import or repackage hazardous substances.

(B) We could expand the standard to include construction, as well as manufacturers, importers, and repackagers. Construction establishments would be required to comply with activities outlined in alternative A.

(C) We could expand the scope of the standard to include all industries. This approach would require all establishments to identify hazardous chemicals in the workplace, and to provide information to employees, customers, and suppliers.

(D) We could expand the standard to include other requirements in addition to those outlined in alternative A. Such requirements could include material safety data sheets (brief papers containing pertinent information on the

identified hazards), substance-employee identification lists (compilations of the hazardous chemicals and of the employees present in a work area), and employee access to certain records which must be maintained by employers.

(E) We could promulgate a regulation jointly or in coordination with the Environmental Protection Agency (EPA). In order to implement the requirements of the Toxic Substances Control Act (TSCA), EPA is planning to issue regulations concerning warning of hazardous or toxic substances. OSHA and EPA are exploring the possibility of issuing a joint or coordinated rulemaking. This would have the advantage of avoiding duplicative requirements imposed on employers and inconsistent labeling practices.

The regulatory mandates of TSCA and the Occupational Safety and Health Act (OSH Act) are complementary. OSHA has jurisdiction for the protection of employees, while EPA governs the distribution of the products in commerce. Although the contents of the rulemakings have not been finally determined, it is expected that the two agencies will divide the responsibility for requirements of a comprehensive chemical substance identification rule. Thus, each agency's individual rulemaking would be limited, but comprehensive coverage would be provided through joint implementation of the two regulations.

OSHA currently considers a combination of alternatives A, D, and E to be most desirable. Such an approach would provide the necessary information to those employees with the greatest need, that is, those employees who work in establishments which manufacture, import, repackage, or use hazardous chemicals. In addition, by coordinating our actions with those of EPA, we would avoid the duplication of regulation by governmental agencies.

Summary of Benefits

Sectors Affected: Workers and establishments in all industries which manufacture, process, import, or repackage hazardous chemicals, or which use such chemicals in manufacturing processes, or which otherwise use or distribute hazardous chemicals.

This regulation will directly affect workers and employers in manufacturing establishments (SIC codes 20 through 39) which produce or use hazardous chemicals. Importers and repackagers who handle such materials would also be regulated. Establishments and employees in other industries not required to comply with the standard

(for example, in retail trade or services) will also benefit from this regulation because they will receive products on which the chemical hazards will be identified.

The most important direct benefit of the standard or its alternatives is the information it will provide to workers exposed to toxic and hazardous chemicals. Although the private market does supply some information on chemical hazards, there is clear evidence that is of insufficient quality and quantity. In the absence of additional regulation, there will continue to be—as there have been in the past—substantial numbers of injuries and illnesses due to workers' lack of knowledge of the hazards present in the workplace. Data drawn from Workmen's Compensation files from participating States and published by the Bureau of Labor Statistics in the Supplementary Data System (SDS) provide information on the number of chemical source injuries and illnesses resulting in lost workdays during 1976 and 1977. Using those data, the percentage of all work-related injuries and illnesses attributable to a chemical source was found to be 0.6 percent and 25.5 percent, respectively. However, it is unclear as to what percent of these injuries and illnesses the proposed regulation will prevent. Also, it may be that a disproportionate fraction of unreported work illnesses may be from a chemical source.

The ultimate purpose of the regulation is to provide information to the worker which can be used to identify potential hazards and enable the worker to take steps to avoid or minimize his exposure. In addition, this information can be used by the worker to alert his/her physician to the potential cause of observed health effects.

The employee will be able to alleviate the costs of health care necessary for the treatment of injuries and illnesses caused by exposure to hazardous substances. Furthermore, a reduction of pain and suffering will result as a consequence of the elimination of some chemical source injury and illness.

The occupational hazard information could influence worker behavior. The worker would be able to take necessary precautions when handling hazardous substances or would be able to use personal protection devices. Society will gain from the additional production forthcoming as worker illnesses and injuries are reduced. The decrease in lost production due to complete and partial workday losses stemming from chemical source injuries and illnesses is expected to be substantial. Diseases which are caused by chemical

exposures and which have a long latency period are also expected to be significantly reduced. Hence, the production capacity of the worker in the workplace will be enhanced.

Furthermore, the reduction of chemical injuries and illnesses will enhance the ability to contribute to the needs of the family. Although this benefit is largely unmeasurable, it is likely to be very significant.

The employers in covered industries will be able to discover the existence of previously unknown hazards, which in some cases may be easily reduced. Non-hazardous or less hazardous products may be substituted for hazardous ones, and labor market pressures which the added information will engender are likely to provide incentives for employers to invest in health and safety programs and equipment, and to develop safer substances and control techniques.

Indirect benefits of the regulation or its alternatives are likely to be considerable, but they are unmeasurable. Workers' families and relatives will benefit because of reduced medical care costs (including hospitalization and physician services) and reduced pain and suffering. Quicker medical diagnoses will also occur when physicians are able to identify chemical hazards in the workplace. Recordkeeping will similarly improve diagnoses where workplace diseases have long latency periods and will provide valuable information to improve epidemiological research. Finally, reduced absenteeism and a clean workplace may contribute to production gains.

Additional indirect benefits include a reduction in the likelihood and severity of low probability, but spectacular, chemically-caused disasters. For example, the polychlorinated biphenyl (PCB) tragedy in Michigan might have been prevented had this standard been in effect at the time.

Summary of Costs

Sectors Affected: Establishments which manufacture, process, import, or repackage hazardous chemicals; establishments in SIC codes 20 through 39 which use such chemicals; and consumers of products containing or produced with hazardous chemicals.

The direct costs of the standard will include an initial (one-time) administrative expense to the manufacturing establishments of identifying, listing, and recording information on existing hazardous substances. There will also be continued costs of updating the informational system as new information is

discovered, new chemicals are added to lists, lists are updated, and so forth. The overall cost of the standard viewed as a whole, to the entire industry, is expected to be minimum because of the shared expenses anticipated by downstream distributors and users.

The preliminary evaluation of the initial cost of alternative A is \$643 million; the expected annual cost of alternative A is \$338 million. The expansion of coverage to include construction as specified by alternative B would increase the costs by a factor of approximately 1.4.

There may be some indirect costs as a result of the standard. For example, there may be a minimum affect on industrial research and development, and, hence, maybe upon innovation. There may be an increase in prices for products containing or those produced with hazardous substances because of the direct costs of identification and labeling. Further, the information provided by the requirements of the standard may generate additional expenditures in the form of wages through collective bargaining agreements for those employees working in hazardous areas, or in the alternative, additional expenditures in the form of capital investments for health and safety equipment and training.

Related Regulations and Actions

Internal: None.

External: A hazard warning regulation authorized by the Toxic Substances Control Act of 1976 is currently under development by the EPA. The regulation would require hazard warnings on all containers distributed in commerce. EPA, under the Federal Insecticide, Fungicide, and Rodenticide Act, also has regulations requiring the labeling of pesticides. The Department of Transportation (DOT), Food and Drug Administration (FDA), and the Consumer Product Safety Commission (CPSC) all have labeling regulations. The Department of Transportation's regulations pertain to the bulk shipment of hazardous goods. They have published an NPRM (44 FR 32972, June 7, 1979) for the display of identification numbers for hazardous materials to improve emergency response capability. FDA and CPSC regulations pertain to products for consumer consumption. However, none of these labeling regulations adequately address the problem of identifying and labeling hazardous substances in the workplace environment.

Active Government Collaboration

OSHA and the Environmental Protection Agency are cooperating in the development of this hazard warning rule. In addition, OSHA is actively participating in the Interagency Regulatory Liaison Group (IRLG) and its Labeling Task Force to assure that the provisions of this rule do not conflict with the existing regulations of other agencies.

Timetable

NPRM—Fall 1980.
Regulatory Analysis—November 1980.
Public Comment—60 days following NPRM.
Final Rule—Summer 1981.
Final Rule Effective—To be determined.

Available Documents

ANPRM—42 FR 5372, January 28, 1977.
"A Recommended Standard—An Identification System for Occupationally Hazardous Materials" (HEW-NIOSH, Publication Number 75-126).
Public docket of the record of rulemaking on chemical labeling (OSHA Docket H-022).
These documents are available for review and copying at the OSHA Technical Data Center, Room S-6212, 200 Constitution Avenue, N.W., Washington, DC 20210.

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DOL-OSHA

Occupational Noise Exposure Hearing-Conservation Amendment (29 CFR 1910.95*)

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) has included this entry because we believe that an amendment to the present noise standard will provide protection to over 5 million workers who are adversely affected by noise. We estimate that the amendment will have an annual impact of \$100 million or more on the economy.

Statement of Problem

Exposure to high levels of noise may cause temporary or permanent hearing loss and other harmful health effects.

The extent of damage depends on two factors: the intensity of the noise and the duration of the exposure. Noise intensity is, for purposes of the existing standard, determined by the sound pressure level, measured as "decibels" and abbreviated "dBA."

There is an abundance of epidemiological and laboratory evidence that protracted noise exposures above 90 dBA cause hearing loss in a substantial portion of the exposed population, and that more susceptible individuals will incur hearing loss at levels below 90 dBA. Noise-induced hearing loss is an irreversible condition that progresses with increased exposure and with age. Because hearing is essential for communication, hearing loss can lead to serious social and psychological handicaps.

Noise can also cause other adverse effects, such as degraded job performance, increases in accidents and absenteeism, job dissatisfaction, headaches, fatigue, sleeplessness, stress-related illnesses, and other effects that are more difficult to isolate as noise-related than hearing loss, and yet are just as real when they occur.

OSHA's existing standard for occupational exposure to noise (29 CFR 1910.95) specifies a maximum permissible exposure to noise of 90 dBA for a duration of 8 hours, 95 dBA for a period of 4 hours, 100 dBA for a period of 2 hours, and so on. The Agency refers to this relationship as the 8-hour time-weighted average of 90 dBA. Thus, exposure to an 8-hour time-weighted average greater than 90 dBA is considered overexposure. Employers must use engineering or administrative controls, or combinations of both, whenever employee exposure to noise in the workplace exceeds permissible exposures. The standard also requires employers to administer a "continuing, effective hearing conservation program" for overexposed employees but the standard does not define such a program, causing enforcement of this provision to be quite limited.

OSHA proposed a revised noise standard in 1974 (39 FR 3773, October 24, 1974) which maintained the current standard's 90 dBA time-weighted average exposure limit, but expanded the requirements for hearing conservation programs. There was a great deal of controversy about alternative permissible exposure levels and their technical and economic feasibility, but few commentators challenged the concept of a hearing conservation program. Along with the 1974 proposal, the Agency developed draft environmental and economic

impact statements and held two sets of public hearings. At present, the written comment and transcripts of the oral testimony in the hearing record amount to approximately 25,000 pages. Analysis of the record reveals information gaps in the nonauditory physiological effects of noise (i.e., adverse health effects other than loss of hearing, such as high blood pressure) and also in the areas of economic and technological feasibility of noise control. The Agency needs to obtain additional material and to perform additional impact analyses before we can propose a comprehensive new regulation.

In the meantime, there are an estimated 2.9 million workers in American production industries with exposures in excess of 90 dBA, and an additional 2.3 million employees with exposures between 85 dBA and 90 dBA. These workers could receive greatly increased protection if the Agency can promulgate and enforce hearing conservation requirements, as an amendment to the present standard. The Agency would then issue a final comprehensive standard after obtaining the missing but necessary information, updating existing cost figures, and selecting the appropriate control strategy.

Alternatives Under Consideration

OSHA is considering the following alternatives at this time:

(A) No regulation; do not make specific requirements for noise monitoring, audiometric (hearing) testing, selection and use of ear protection, and employee education. We do not favor this alternative, however, as issuance of and compliance with a final comprehensive regulation are at least 2 years in the future, the Agency believes workers need the interim protection that hearing conservation measures can provide.

(B) Issue a final regulation in the immediate future that is essentially the same as the 1974 proposal. This option has the advantage of providing renewed emphasis on engineering controls, but it appears that the exposure levels in the proposed standard are not adequately protective. Furthermore, we lack sufficient information on the feasibility of reducing noise to below 90 dBA for all industries. Also, we lack quantitative information on the nonauditory effects of noise.

(C) Issue the hearing conservation requirements as an amendment to the present noise standard (29 CFR 1910.95), and issue the final regulation at a later date. Under this alternative, the Agency would continue to study the nonauditory effects of noise and we would explore

various regulatory approaches to engineering controls, such as providing different compliance periods for different industries or requiring lower noise levels for new plants. During this time the Agency would continue to enforce the present standard.

We currently regard alternative (C) as the most desirable alternative because it will provide millions of employees with immediate protection while the Agency prepares the final standard.

Summary of Benefits

Sectors Affected: Manufacturing industries; electric, gas, and sanitary services; Federal and State agencies with industrial programs; and employees of these industries and programs.

In 1976, an OSHA study presented the following estimates of the percentage of workers which would be affected by the proposed noise regulation in various industry sectors.

SIC	Industry	Percent of Production Workers Exposed above 85 dBA
20	Food	28
21	Tobacco	10
22	Textiles	75
23	Apparel	1
24	Lumber & Wood	94
25	Furniture & Fixture	30
26	Paper	40
27	Printing & Publishing	45
28	Chemicals	37
29	Petroleum & Coal	76
30	Rubber & Plastics	20
31	Leather	1
32	Stone, Clay & Glass	16
33	Primary Metals	63
34	Fabricated Metals	34
35	Machinery Except Electrical	26
36	Electric Machinery	7
37	Transportation Equipment	23
49	Electrical, Gas & Sanitary Services	74

Insofar as OSHA regulations impact government workers this action will also benefit Federal and State government workers in industrial jobs.

Hearing conservation measures, including noise exposure monitoring, audiometric testing, hearing protection devices, and employee education, should have considerable benefits for more than 5 million employees. OSHA is in the process of quantifying the expected benefits of a hearing conservation regulation by estimating the amount of hearing that may be saved by instituting hearing conservation measures at various exposure levels. The Agency will also discuss the nonauditory benefits in qualitative terms.

Hearing protection devices should reduce the incidence of noise-induced hearing loss and also the various nonauditory effects mentioned above. Audiometric tests should enable employers and employees to take proper precautions to prevent further deterioration of hearing, and monitoring and educational programs will increase general awareness of noise problems and should encourage noise control at the source.

Hearing conservation measures, however, will not provide 100 percent protection to overexposed employees. The adequacy of protection will depend upon the quality of the hearing protector, the tightness of the fit, and its use by employees. Permanent hearing loss can occur before it is identified by audiometric testing and, of course, nonauditory effects cannot be detected by audiometry. Thus, none of these measures is as effective as controlling the hazard at the source, although a well-run hearing conservation program can be very effective in minimizing the adverse effects of noise.

One of the intangible benefits of this regulation may be a general improvement of employee and employer awareness of occupational health problems and the need for precautions. Another benefit, which was suggested by a National Institute for Occupational Safety and Health study, is a reduction in workplace accidents and absenteeism.

Summary of Costs

Sectors Affected: Manufacturing industries; electric, gas, and sanitary services; and Federal and State agencies with industrial programs.

All of the two-digit SIC industries listed under "Summary of Benefits" above have noise problems sufficient to necessitate hearing conservation programs. At this time, the Agency anticipates that this action will not apply to the construction industry.

OSHA has developed preliminary estimates of the expected compliance costs of this regulation. The estimated annualized costs for each major provision, in 1980 dollars, are:

Monitoring	\$3,731,000
Audiometric Testing	87,168,000
Ear Protectors	45,534,000
Training	40,028,000
Warning Signs	1,795,000
Recordkeeping	6,033,000
	254,290,000

There will be some capital outlays by large firms which elect to develop in-

house programs; however, higher operating expenses constitute the greatest part of these annual compliance costs.

At this time we do not anticipate any indirect costs, such as job losses or plant closings. However, we will try to identify any such costs before completing our economic analysis.

Related Regulations and Actions

Internal: Within OSHA there is a regulation for occupational noise exposure in the construction industry (29 CFR 1926.52). This regulation is virtually identical to OSHA's regulation for general industry (29 CFR 1910.95).

Within the Mine Safety and Health Administration (MSHA) there are three noise exposure regulations:

1. Underground coal mines (30 CFR 70.500 to 70.510). These regulations cover permissible exposure limits, noise measurement and survey requirements, and reporting procedures.

2. Surface work areas of underground coal mines and surface coal mines (30 CFR 71.300 to 71.305). These regulations are essentially the same for those for underground coal mines.

3. Metal and nonmetal mines (30 CFR 55.5, which is essentially the same as OSHA's noise standard, 29 CFR 1910.95).

External: All States having their own occupational health programs must promulgate requirements at least as protective as those of the Federal OSHA. A few States already have some hearing conservation requirements.

The Department of Defense (DOD) has had hearing conservation requirements for many years. Under the most recent DOD Instruction (No. 6055.3, June 8, 1978), the three services (Army, Navy, Air Force) develop and issue their individual requirements.

The Federal Advisory Council on Occupational Safety and Health has established a Subcommittee on Noise for the purpose of developing noise abatement and hearing conservation guidelines to be used by all Federal agencies.

The Environmental Protection Agency (EPA) has regulations and programs for noise control and hearing conservation. Under the Noise Control Act of 1972, EPA has the statutory responsibility to coordinate all Federal noise programs.

Active Government Collaboration

Formal coordination between OSHA and other agencies takes place under the auspices of the Interagency Regulatory Liaison Group. The vehicle is the Noise Subgroup of the Regulatory

Development Work Group. This Subgroup is chaired by the Environmental Protection Agency (EPA). OSHA interacts with the other member agencies: EPA, Consumer Product Safety Commission, and Food and Drug Administration. We are also coordinating activities with the Mine Safety and Health Administration and with the Department of Defense under the auspices of the Noise Subgroup's Hearing Conservation Planning Group, which is chaired by OSHA. Informal liaison takes place with the National Institute for Occupational Safety and Health, the Department of Transportation's Federal Railroad Administration, and the National Bureau of Standards in the Department of Commerce.

Timetable

Regulatory Analysis—Fall 1980.

Final Rule—Fall 1980.

Final Rule Effective—Spring 1981.

Available Documents

Occupational Noise Exposure, 29 CFR 1910.95 (existing standard).

"Impact of Noise Control at the Workplace," January 1974 contractor report on technical and economic impact.

Occupational Noise Exposure, 39 FR 37773, October 24, 1974 (NPRM).

"Proposed Regulation: Noise," June 1975, Draft Environmental Impact Statement.

"Economic Impact Analysis of Proposed Noise Control Regulation," April 1976 (contractor report).

OSHA Docket OSH-011A and B.

All documents are available for review in the Docket Office, Room S-6212, U.S. Department of Labor-OSHA, 200 Constitution Avenue, N.W., Washington, DC 20210. A fee is usually charged for copies of these documents.

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DOL—OSHA**OSHA General Industry Standard for Walking and Working Surfaces (29 CFR 1910 Subpart D*), and Construction Safety Standards for Ladders and Scaffolding (29 CFR 1926 Subpart L*), Floor and Wall Openings, and Stairways (29 CFR 1926 Subpart M*)****Legal Authority**

The Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) believes these rules are important because preliminary economic estimates indicate that these revisions may involve compliance costs in excess of \$100 million annually because the standards apply to almost all workplaces.

Statement of Problem

The number of occupational injuries resulting from fall accidents associated with unsafe ladders, scaffolding, floors, wall openings, stairways, and walking and working surfaces ranges from 20 to 25 percent of all occupational injuries in general industry and construction. There are approximately 60 million workers in these categories. The National Safety Council estimates that the direct medical cost and lost productivity cost of injuries and fatalities resulting from these hazards may reach \$5 billion annually (1977 dollars).

Portions of the current safety and health standards, which were promulgated by OSHA in 1971, are deficient in coverage, ambiguous, or redundant. In addition, industry and construction groups have revised and updated their voluntary standards. Court decisions have held some of the current standards to be invalid, and other standards have been modified by OSHA program directives or variances in an attempt to deal with problems of interpretation. The proposed revision of the standards will allow these deficiencies to be addressed and will incorporate all modifications.

OSHA needs to replace the existing specification-oriented standards with revised performance-oriented standards (where criteria are set but where specific ways of meeting the criteria are not set), and to include specific hazardous items not currently covered, such as catenary scaffolds and roof perimeter guarding. Furthermore, if no Agency action is taken, the existing ambiguous and lengthy language will continue to be inadequate to provide protection in the areas discussed above.

OSHA bases this proposed action on

more than 5 years of data collection which documents hazards, and on its commitment to prevent hazard-related injuries. OSHA will coordinate the revision of these standards with similar activities of professional and trade organizations and industry and labor representatives.

Alternatives Under Consideration

The first alternative, a comprehensive revision of the existing standards, would incorporate performance-oriented standards, language simplification, and additional coverage for hazards that are not currently regulated, such as those addressing manholes, power utility towers, and the use of body belts and harnesses. The performance-oriented standards would permit and encourage more flexibility in controlling hazards. OSHA believes that greater flexibility would lead to more effective protection at decreased expense. As part of the first alternative, OSHA would include an appendix to the standards document to aid employers and employees in complying with the performance-oriented standards through alternative methods. The appendix would provide specific, non-mandatory ways of complying with the standard. Failure to use any of the alternatives in the appendix would not mean failure to comply with the standard. The purpose of an appendix would be to help employers be aware of acceptable methods of compliance which they may follow if they do not wish to develop their own compliance methods to meet the performance-oriented language of the standard.

The advantage of this alternative is that it would address the most important problems of the existing standards by fully using the research work, support studies, and outside assistance that OSHA has collected to date. A comprehensive revision of the standards would permit more flexible and cost-effective compliance methods, reduce inconsistency among several regulatory standards, and simplify regulatory language. However, this alternative may have a major economic impact because it would cover a greater number of hazards than the present standards. Consequently, this option would involve a greater number of interested parties in the rulemaking procedures.

The second alternative is a phased effort, where a series of rulemaking procedures would be used in an established order of priority to remedy major problems in the existing standards, rather than to comprehensively revise those standards in a single effort. This alternative would not address the many gaps and shortcomings in the current standards

and would not include an appendix listing alternative methods of compliance.

This alternative may cost the affected employers less and may simplify the overall rulemaking process, but it would not address many important hazards that are presently causing working injuries. This alternative would only remove those major problem areas known to exist in the present standards. In addition, it would not advance OSHA's regulatory policy of promulgating performance-oriented rather than specification standards.

The third alternative is to take no action, leaving the present standards as they are. This would greatly hinder OSHA's enforcement and consultation efforts, and certain hazardous areas, such as catenary scaffolding and steep-roof-perimeter protection, would remain unregulated. Many organizations and individuals who have contributed significantly to the development of proposed revisions would be disappointed with OSHA. In addition, there would be no immediate hope of more adequately addressing those hazards that may account for one-fifth of all occupational injuries.

Adoption of any one of the three alternatives would have some effect on most industrial activities. However, under the first and second alternatives, OSHA would stagger the effective dates for implementation to enhance voluntary compliance, to minimize potential economic effects and to provide time to implement an enforcement strategy.

The Agency currently regards the first alternative as the most desirable, since it is the only one that will adequately address all of the injuries associated with falls.

Summary of Benefits

Sectors Affected: All general industries (manufacturing; wholesale and retail trade; transportation, communication, electric, gas, and sanitary services; finance, insurance, and real estate; and service industries); the construction industry; and employees in these industries.

Major benefits are expected to be a reduction in work-related injuries and deaths, which now account for approximately 20 percent of all occupational injuries. There would also be a reduction in related personal and family pain and suffering. OSHA expects to see benefits because the proposed standard would cover currently unregulated hazards and would revise existing standards that offer inadequate protection. Although there are no simple solutions to the hazards covered by these standards,

even marginal improvements in accident rates will be significant when aggregated on a nationwide basis. For example, a 10 percent reduction in work-related falls could save \$500 million (1977 dollars) annually in associated medical and lost productivity costs.

In addition to these economic benefits, the revision of the construction standards to include all relevant provisions and the parallel rulemakings for construction and for general industry would encourage compliance by all employers by making it easier for employers to locate the particular regulations covering a specific situation. Further, OSHA will use a new format that will help to eliminate redundancy and ambiguity. Elimination of ambiguity will assist employers and compliance officers alike by reducing confusion as to the exact requirements of the standard. Less ambiguous language will also aid in any judicial review of a citation.

Summary of Costs

Sectors Affected: All general industries; and the construction industry.

The cost of the first alternative, comprehensive revision using performance-oriented standards, may exceed \$100 million (1980 dollars) for employers to comply. This cost includes capital costs as well as operation and maintenance costs. These costs primarily affect the private sector and include every employer who is covered by either the OSHA general industry or construction industry standards. We have not yet determined whether there will be differential costs for small businesses. There will be some consideration given to the size of the facility and the frequency of use. OSHA will conduct an economic analysis.

Related Regulations and Actions

Internal: Following this action, OSHA intends to revise its standards for walking and working surfaces in the maritime industries. The agricultural standards do not need revision at this time.

External: Publications by the American Society of Testing and Materials, the American National Standards Institute, and the American Society of Civil Engineers contain or soon will contain related voluntary standards for many of the products and installations that this proposal addresses. OSHA has shared its research information with all of the affected standards development groups.

Active Government Collaboration

OSHA has worked and is continuing to work with the National Bureau of Standards in the Department of Commerce to develop safety requirements for scaffolding, guardrails, and safety belts. The Consumer Product Safety Commission and OSHA have been working together to establish satisfactory ladder performance standards.

The Coast Guard is also developing standards for maritime vessels and oil drilling platforms on the Outer Continental Shelf where hazards exist that are comparable to those addressed in this rulemaking. OSHA will coordinate this rulemaking with the Coast Guard's action in these areas.

Timetable

NPRM—Summer 1981.

Regulatory Analysis—Accompanying NPRM.

Public Hearings—In at least three cities.

Public Comment Period—90 days after NPRM.

Final Rule—To be determined.

Final Rule Effective—To be determined.

Available Documents

ANPRM—40 FR 17160, April 23, 1976. Comments and transcripts from town meetings which were held on June 8-10, 1976, in San Diego, California; June 15-17, 1976, in Rosemont, Illinois; June 22-24, 1976, in New Orleans, Louisiana; and June 29-July 1, 1976, in New York, New York. These documents are available for review and copying at the OSHA Technical Data Center, Room S-6212, Second and Constitution Avenue, N.W., Washington, DC 20210.

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DOL—OSHA

Regulations for Reducing Safety and Health Hazards in Abrasive Blasting Operations (29 CFR 1910.94(a)*)

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) believes this regulation is necessary to protect the 100,000 abrasive blasters and employees who work in and around abrasive blasting operations from respiratory impairment and a variety of occupational safety and health hazards.

Statement of Problem

Abrasive blasting operations expose workers to several occupational hazards which may cause disease and physical injury. Of primary concern are the hazards of (1) dusts of silica (sand) and silica substitutes, (2) excessive noise levels, and (3) safety hazards, such as slippery surfaces and conditions that enhance the development of fires and explosions.

In abrasive blasting operations, streams of silica or sand substitutes are projected by compressed air to prepare a clean surface for subsequent treatment. Large quantities of dust are created which, when inhaled, are responsible for specific types of lung disease.

Silicosis is one of those diseases. It is a tissue-scarring disease of the lung that is irreversible and often fatal. The disease is responsible for a large number of deaths, either directly or by predisposing workers to tuberculosis and other infectious diseases.

The severity of this preventable disease has been repeatedly emphasized by the occupational health community, in which there is general agreement that abrasive blasters usually contract silicosis after about 10 years of occupational exposure. The incidence of silicosis increases progressively with increasing concentrations of dust present in the work environment. Systemic poisoning or cancer may also develop, depending upon the composition of the abrasive. Abraded byproducts (i.e., any materials removed from the surface of the object being blasted) may also contain toxic materials and cancer-causing agents. Furthermore, dust hazards affect not only the abrasive blasters, but also those nearby employees assisting with the blasting as well as other employees at adjacent worksites.

In addition to the severe dust hazards, this worker population is exposed to excessive noise levels. The primary effect of noise exposure is premature hearing loss, although a wide spectrum of nonauditory adverse health effects, such as changes in blood pressure and decreases in respiratory rates, can also result from noise exposure.

In abrasive blasting work, a realistic potential for causing loss of life or limb is also created by the heavy dust clouds which reduce visibility. Additionally, the powerful collision of abrasive material against hard surfaces generates airborne particulates which may result in fire and explosion hazards, particularly where electrical apparatus is present.

Alternatives Under Consideration

The Agency is considering the following regulatory approaches:

(A) There are major deficiencies with the existing abrasive blasting standard (29 CFR 1910.94(a)) which result in inadequate employee protection. These deficiencies include the lack of requirements for regulated abrasive blasting zones; monitoring for silica exposures; adequate engineering controls and work practices; and adequate respiratory protection programs, medical surveillance, and employee training. One alternative would be to eliminate existing regulatory deficiencies by adding the appropriate requirements and revising the existing regulations by referencing appropriate health and safety provisions (occurring throughout 29 CFR Part 1910) which currently apply to abrasive blasting.

(B) A second alternative would be to ban the use of sand in addition to the regulatory additions and revisions discussed above. Sand used in abrasive blasting is already banned in several countries and the Mine Safety and Health Administration (MSHA) is considering prohibiting its use in above ground mining operations.

The toxicity of some alternative abrasives and abraded products indicates that a revision of the existing regulations must be accomplished to ensure adequate employee protection, regardless of whether or not the Agency decides to ban sand as an abrasive.

The Agency believes there is no suitable nonregulatory approach because the existing regulations are inadequate to provide protection, and traditional nonregulatory approaches, such as program directives and consultation, do not appear to provide relief because cases of chronic lung disease and accidents among abrasive blasters continue to occur.

Summary of Benefits

Sectors Affected: Abrasive blasters; associated workers; and establishments in the construction, manufacturing, and transportation industries listed in Table 1, particularly heavy construction not elsewhere classified, painting, paperhanging and decorating, and plating and polishing.

Table 1.—Industries Affected by the Abrasive Blasting Standard

SIC code	Industry short title
1629	Heavy construction, not elsewhere classified
1721	Painting, paperhanging, and decorating
1743	Terrazzo, tile and marble, and mosaic work
2911	Petroleum refining
3272	Concrete products, except block and brick
3281	Cut stone and stone products
3312	Blast furnaces and steel mills
3321	Gray iron foundries
3322	Malleable iron industries
3323	Steel foundries, not elsewhere classified
3352	Aluminum rolling and drawing
3356	Nonferrous rolling and drawing
3361	Aluminum foundries
3362	Brass, bronze, and copper foundries
3369	Nonferrous foundries, not elsewhere classified
3391	Iron and steel forgings
3399	Primary metal, not elsewhere classified
3441	Fabricated structural steel
3471	Plating and polishing
3731	Shipbuilding and repairing
4011	Railroads, line-haul operating

The Census Bureau categorizes these workers as machine operatives (Census number 690) and construction laborers (Census number 751).

Regulatory action in this area will decrease the number of cases of lung disease among the 100,000 exposed workers. The reduction in exposure levels will produce a corresponding reduction in adverse health effects. The Agency also expects regulatory action to result in fewer injuries and deaths related to abrasive blasting safety hazards. Reduction in lung disease and injury associated with abrasive blasting will decrease the pain and suffering of workers and their families and the burden on social programs, and will provide employees with significant risk reductions and improvements in productivity.

Summary of Costs

Sectors Affected: Construction, manufacturing, and transportation industries listed above in Table 1, particularly heavy construction not elsewhere classified, painting, paperhanging and decorating, and plating and polishing.

Three industrial classifications, SIC 1629 (Heavy Construction, not elsewhere classified), SIC 1721 (Painting, Paperhanging and Decorating), and SIC 3471 (Plating and Polishing), account for approximately 55 percent of the abrasive blasting operations and about

78 percent of the abrasive blasters. The approximate population at risk is 100,000 workers.

Preliminary estimates of the additional costs of alternative A are listed below. The size of the range reflects variations in the stringency and timing of selected provisions of this alternative.

Table 2.—Cost of Alternative A (1980 dollars)
[Dollars in millions]

Type of Cost	Amount
Installed capital	\$13 to \$185.
Annual capital charge	\$9 to \$44.
Annual energy	\$0.1 to \$8.
Annual operating and maintenance	\$51 to \$78.
Total annualized ¹	\$54 to \$130.

¹ Annualized costs are estimated to be less than one-tenth of one percent of sales.

OSHA estimates that the alternative of banning sand would cost an additional \$94 million (1980 dollars) in annual operating and maintenance costs because of the extra cost of substitutes for silica sand. Since sand sold for blasting is less than 3 percent of the sales of sand suppliers, the incremental effect on sand suppliers of banning sand would be minor. As noted above, there may also be indirect costs caused by increases in health problems due to the possible hazardous properties of substitutes which may be used for sand. For example, the National Institute for Occupational Safety and Health has determined that some slag substitutes break down, after blasting, into respirable particulates of highly toxic heavy metals.

These preliminary figures suggest that both alternatives are economically feasible for the industries affected. The Agency is preparing an economic impact assessment; tentative results indicate that even if industry is able to pass on compliance costs completely to their consumers, prices will increase by less than two-tenths of one percent if sand is banned (alternative B) and by less than one-tenth of one percent if alternative A is implemented. Impacts on output, employment, and market structure are expected to be minor as well.

Related Regulations and Actions

Internal: OSHA intends to develop a new standard covering the use of silica in all industries. This new standard may change the current permissible exposure limit for silica and may apply to abrasive blasting operations. However, we do not project publication of a proposal or any significant activity on a standard for silica within the next 12 months.

External: The Mine Safety and Health Administration is also considering a

change in the permissible exposure level for silica. In addition, it is considering banning its use in aboveground operations.

Active Government Collaboration

None.

Timetable

NPRM—Fall 1980.
Regulatory Analysis—Fall 1980.
Public Comment Period—Following NPRM.
Public Hearing—Following NPRM.
Final Rule—Fall 1981.
Final Rule Effective—To be determined.

Available Documents

Public docket of the record of rulemaking on safety and health hazards of abrasive blasting operations (OSHA Docket No. H-102).

These documents are available by mail and for review and copying at the OSHA Technical Data Center, Room S-6212, Third Street and Constitution Avenue, N.W., Washington, DC 20210. A fee is usually charged for copies of these documents.

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DOL-OSHA

Safety and Health Regulations for Locking Out and Tagging Energy Sources in General Industry (29 CFR Part 1910) and in Construction (29 CFR Part 1926*)

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) thinks these rules are important because they concern a subject in which the public has shown considerable interest and because preliminary economic information reveals that these regulations may have a major impact on the economy.

Statement of Problem

The proposed regulations will protect employees from death and injury caused by the accidental deactivation of machinery, equipment, or systems that have not been turned off, locked out,

and tagged while they are being worked on. Lockout/tagging is a term applied to a device or method to prevent accidental activation of machinery, equipment, or systems while employees are performing maintenance, repair, servicing, or installation.

Evaluation of 125 fatality investigations involving fixed machinery during the 2-year period 1974 to 1976 indicates that 46 percent (58) of these fatalities were related to the failure to properly deactivate and lock out the equipment. The new regulations will apply, with few exceptions, to all equipment and systems in industries covered by 29 CFR Part 1910 for General Industry and by 29 CFR Part 1926 for the construction industry. The agriculture and maritime industries will not be regulated by these standards.

At present, lockout-related regulatory provisions are scattered throughout the general industry and construction standards, and many of these provisions are inadequate because they only address lockout procedures for electrical power sources. The new standard will deal with the hazards associated with the more sophisticated machines in modern use, which are powered by hydraulic, pneumatic, and electronic sources. The standard will also address hazards associated with the potential energy latent in these systems.

If no action is taken, the death and injury toll caused by lockout-related accidents will continue to rise.

Alternatives Under Consideration

OSHA is considering the following alternatives:

(A) Continue using the existing standards, most of which were adopted before 1973. Choosing this option means that accidents attributable to inadequate and outdated lockout provisions will continue, and compliance activity will also continue to rely on the General Duty Requirement of the OSH Act. This section of the Act is only used to cite serious violations involving hazards not covered by any OSHA standard; these citations point to gaps in OSHA's regulatory coverage. The advantage of this option is that it would require no additional outlay of Agency resources; the disadvantages are that accidents and lack of worker awareness of lockout hazards will continue.

(B) Revise the individual lockout-related provisions in each of the subparts of 29 CFR Part 1910 (General Industry Standards) and 29 CFR Part 1926 (Construction Safety Standards). The advantage of this choice is that the lockout provisions pertaining specifically to a particular industry, such as tunneling, would be located in the

appropriate subpart with all other industry-specific rules. The disadvantage of this option is that revising all the affected subparts would take many years and be very expensive in terms of OSHA's financial and personnel resources.

(C) Promulgate comprehensive new lockout and tagging standards that will apply, with few exceptions, to all machines, equipment, and systems used in industries covered by 29 CFR Parts 1910 and 1926. Such a standard will probably include requirements for work practices, operating procedures, training, and equipment design and operation. The disadvantage of this approach is that standards covering all industries may not be as responsive to the hazards and needs of a specific industry as one tailored to that industry. The chief advantage is that the Agency will be able to reduce the injury and fatality toll attributable to lockout-related causes in the most effective and timely fashion. For this reason, OSHA presently favors alternative (C). Such a standard should be written in performance language, which encourages voluntary compliance by permitting employers the flexibility to use the most cost-effective methods of compliance.

Summary of Benefits

Sectors Affected: All manufacturing industries (SIC Division D), construction industries (SIC Division C), and electric, gas, and sanitary services (SIC Division F); machinery and process system users scattered throughout the transportation, communications wholesale and retail trade and service sectors (SIC Divisions E and I); and workers in these industries.

OSHA believes serious lockout-related incidents are on the increase as the use of more complex and sophisticated power sources becomes widespread in the industrial economy. Preliminary data indicate that approximately 40,000 lost workday injuries annually may be lockout-related. Although property losses are sometimes involved, the most significant losses result from injuries and fatalities to workers. Workers who suffer permanent disabilities sustain large personal and economic losses, while employers lose skilled workers. Data to estimate trend increases for this type of accident are not currently available, but we will gather it during the rulemaking process.

Indirect benefits may accrue to machinery manufacturers if the regulation's performance requirements reduce product liability, as is anticipated.

Summary of Costs

Sectors Affected: All manufacturing industries (SIC Division D), construction industries (SIC Division C), and electric, gas, and sanitary services (SIC Division F); machinery and process system users scattered throughout the transportation, communications wholesale and retail trade and service sectors (SIC Divisions E and I); and users of these industries' products and services.

OSHA and the National Institute for Occupational Safety and Health (NIOSH) are currently investigating injury data and potential cost impacts and are not yet able to estimate whether these regulations will have a major impact on the economy. Direct costs to employers will result from the increased cost of lockout devices and increased labor costs required by preventive lockout procedures and work practices. These costs will be small relative to machine costs, and they will be partially offset by productivity increases associated with accident reduction. Some portion of these direct costs may be passed on to consumers in the form of minor price increases, or may be pushed back to machine and tool workers in the form of lower machine profit margins in the event that machinery users postpone machinery replacements and reduce overall demand.

Related Regulations and Actions

Internal: The General Industry Standards, 29 CFR Part 1910, and the Construction Standards, 29 CFR Part 1926, contain widely dispersed lockout-related provisions. Examples can be found in 1910.145, 1910.179, 1910.213, 1910.218, 1910.261, 1910.262, 1910.263, 1910.265, 1926.20(b)(3), 1926.150(d), 1926.600(a)(3)(i), and 1926.957(b).

External: The States of California, Michigan, and Washington presently have or have proposed regulations governing the locking out and tagging of energy sources. These states submitted plans under the OSH Act, U.S.C. § 655, which allows for the development and enforcement of State occupational safety and health standards if they are as effective as the Federal regulations. The American National Standards Institute is developing a voluntary standards for lockout and tagout. The National Fire Protection Association is also developing a voluntary standard for locking out and tagging of electrical equipment.

Active Government Collaboration

OSHA is coordinating its efforts and sharing information with the National

Institute for Occupational Safety and Health of the Department of Health and Human Services, which has published a Request for Information on this topic in the *Federal Register* (45 FR 7006, January 30, 1980).

Timetable**General Industry**

Informal Public Meetings—Fall 1980.
NPRM—Summer 1981.
Regulatory Analysis—Summer 1981.
Public Comment Period—60 days after publication of NPRM.
Public Hearings—Fall 1981.
Final Rule—To be determined.

Construction

Informal Public Meetings—Fall 1980.
NPRM—Summer 1981.
Regulatory Analysis—Summer 1981.
Public Comment Period—60 days after publication of NPRM.
Public Hearings—Fall 1981.
Final Rule—To be determined.

Available Documents

General Industry—Docket No. S-012.
ANPRM—45 FR 41012, June 17, 1980.
Comments received in response to the ANPRM.

"Notice of Request for Information: NIOSH," 45 FR 7006, January 31, 1980.

"Machinery and Machine Guarding, Request for Information," 42 FR 19741, January 7, 1977.

Petition from the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW).

OSHA's study on fixed machinery by the Division of Statistical Studies.

American National Standards Institute Z241.1-1975, pages 6, 8, 9, 10.

Construction—Docket No. S-203.

ANPRM—45 FR 41015, June 17, 1980.
Comments received in response to the ANPRM.

These documents are available for inspection and copying at the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, Room S-6212, 200 Constitution Avenue, N.W., Washington, DC 20210, (202) 523-7894.

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DOL—OSHA**Safety and Health Standard for Conveyors (29 CFR 1910.186)****Legal Authority**

The Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) thinks this rule is important because extrapolation of data derived from studies of the groups most affected indicates that this regulation may have a major impact on the economy.

Statement of Problem

OSHA has proposed a standard (39 FR 19507, June 3, 1974) to reduce safety hazards when employees work with or close to conveyors in general industry. Conveyors are the most common mechanical material-handling equipment. They range in complexity from small portable units to large and complex systems that transport materials, packages, and units over long distances. More than 288 industry groups use conveyors, but it is not possible to estimate the number of workers exposed to conveyors in the course of their work.

Data from the Bureau of Labor Statistics Supplementary Data System in 1976 and 1977 indicate that conveyors are the reported source of at least 17,000 lost workday injuries annually for over 250 industry groups. This case count, about one percent of the annual total of lost workday injuries, suggests that conveyors are an unusually frequent source of occupational injury. Moreover, conveyors produce more than the average percentage of permanent disabilities, and the average medical and compensation payments for conveyor-related injuries are higher than the average payments for all injuries. Hence, the conveyor-related injuries are more severe than the average injury. The proposed conveyor standard therefore attacks a widespread and serious occupational safety problem.

If this problem is not addressed, the pain and suffering and loss of productivity caused by conveyor-related fatalities and injuries will continue.

Alternatives Under Consideration

(A) One option would be to publish a final rule based as closely as possible on the proposal published in 1974, which

followed the specification approach favored by OSHA at that time. Specification-based standards are designed to attain a safety objective by prescribing the workplace and equipment details necessary for compliance, while a performance-based standard states the acceptable level of control required to deal with the hazard but does not specify the method of attaining compliance. Such a rule would therefore not permit the flexibility of compliance that a performance standard does. The advantage of this option is that it would require the least amount of effort, in terms of money and personnel, by the Agency.

(B) A second alternative would be to rewrite the proposal's requirements in performance language, after consideration of comments received in response to the 1974 proposal and any other relevant material received or generated by OSHA in the interim, and then to publish a final rule. The advantages of this approach are that it would encourage voluntary compliance by giving employers the greatest possible amount of flexibility in choice of method of compliance, and it would also be the most efficient way of proceeding. The disadvantage of this approach is that the final rule will be based primarily on material received or generated in response to the 1974 NPRM. However, this disadvantage should be minor, because there have been few changes in conveyor technology since 1974.

(C) A third choice would be to initiate a new rulemaking, which would involve publishing a new NPRM. The advantage of this method would be that the record would be current; however, the disadvantages—a major commitment of Agency time and money and an indefinite postponement of worker protection against conveyor hazards—far outweigh any advantage.

The Agency favors Alternative (B), for the reasons discussed above.

Summary of Benefits

Sectors Affected: All general industries (manufacturing; wholesale and retail trade; transportation, communications, electric, gas, and sanitary services; finance, insurance, and real estate; and service industries); and employees in these industries.

In 1976, establishments in 288 industry groups reported conveyor-related injuries to the Supplementary Data System, which is maintained by the Bureau of Labor Statistics. Workers and establishments in the industry groups displayed in Table 1 will be particularly affected. These industry groups account

for approximately 34 percent of all reported conveyor-related injuries.

TABLE 1.—Industries Studied and Conveyor-Injury Rank

SIC Code	Industry title	Conveyor injury rank	
		1976	1977
201	Meat Products	3	3
203	Canned Fruits and Vegetables	2	2
205	Bakery Products	11	6
208	Beverages	9	7
242	Sawmills	1	1
243	Millwork, Veneer, and Plywood	12	9
265	Paperboard Boxes	8	12
271	Newspapers	28	32
332	Iron and Steel Foundries	21	21
344	Fabricated Structural Metal	30	25
3711	Motor Vehicle Assembly (Ranking is for SIC 371, of which SIC 3711 is a major part)	7	8
514	Wholesale Groceries	6	4
541	Retail Groceries	10	11

Source: OSHA, Office of Regulatory Analysis. Rankings are based on conveyor-coded injuries reported to the Bureau of Labor Statistics, Supplementary Data Systems (SDS).

Based on the reports to the Supplementary Data System, we estimate that 16,720 conveyor-related lost workday injuries, approximately one percent of all lost workday injuries, occurred in 1976. There is some evidence that these injuries are more severe than the typical occupational injury. An analysis of the type of accidents producing these injuries suggests that the proposed standard, together with the new proposed provision designed to protect workers against hazards caused by trying to unjam a conveyor that has not been turned off and locked out to prevent the power from accidentally being turned on, will address most of the hazards that produce conveyor-related injuries. For example, several provisions of the standard will address "caught-in" and "caught-between" accidents, the accident type that accounts for almost half of all conveyor-related injuries and three-quarters of the permanently disabling conveyor-related injuries. We therefore expect the standard to reduce substantially the frequency and severity of conveyor-related injuries.

We can estimate the indirect benefits of the conveyor standard by examining the current costs (in 1979 dollars) associated with conveyor-related injuries. These injuries require an estimated \$21.2 million in compensation payments and \$11.2 million in medical payments annually.

In addition, workers often suffer an uncompensated income loss after conveyor-related injuries. Finally, a recent estimate of the total loss to firms from a lost workday injury implies that conveyor-related injuries currently cost firms approximately \$234 million annually (in 1979 dollars). A substantial reduction in conveyor-related injuries

would, therefore, have sizable indirect benefits.

Summary of Costs

Sectors Affected: All general industries (manufacturing; wholesale and retail trade; transportation, communications, electric, gas, and sanitary services; finance, insurance, and real estate; and service industries).

Establishments in the 288 industry groups reporting conveyor-related injuries in 1976 to the Supplementary Data System will be affected. The 13 industry groups displayed in Table 1 account for approximately 34 percent of all reported conveyor-related injuries and so will be especially affected by a conveyor standard. OSHA selected these industry groups to study the economic impact of the proposed standard. Assessing industries having the largest number of conveyor-related injuries maximizes the chances of detecting a major impact on any one industry. This selection procedure cannot validly be used to estimate total compliance costs, but incremental costs attributable to the proposed standard or to a version of the standard containing alternative provisions for all affected industries may exceed \$100 million. Table 2, below, displays estimates of the incremental costs of the proposed standard and the alternative version for the industries studied. The alternative version differs from the proposed standard by including exceptions and allowing cost-effective alternatives for compliance in provisions for work practices, training, visual inspections, and warning devices.

Table 2.—Cost Estimates for Industries Studied—1980

(In millions of dollars)

Type of cost	Proposed standard	Alternative standard
Installed Capital	189,206	181,587
Annual Capital	34,461	33,221
Annual Operating	27,678	10,358
Total Annualized (Annual Capital + Annual Operating)	62,140	43,579

Capital costs are annualized using a standard capital recovery formula, a 10 percent interest rate, and an asset lifetime that varies with the nature of the equipment purchased.

Table 3, below, describes the implications of these cost estimates for price, output, and employment in the industries studied. The final two percentages in the Table estimate the potential effect on market structure.

Table 3.—Estimated Adverse Economic Impact

	Percent change in price	Percent change in output	Percent change in employment	TAC* as a percent of profit	ICC* as a percent of normal investment
Proposed Standard.....	0.0205	0.0513	0.0815	0.85	2.44
Alternative Version.....	0.0144	0.0360	0.0445	0.59	2.34

*TAC—total annualized costs; ICC—installed capital cost.

These estimates of adverse economic impact suggest that both the proposed and the alternative version of the standard are economically feasible for the industries studied. Since the industries studied are among the largest contributors to the annual toll of conveyor-related fatalities and injuries, these estimates also suggest that the proposed and alternative standards are feasible for the remaining conveyor-using industries as well.

Related Regulations and Actions

Internal: There is an OSHA safety standard for conveyors used in the construction industries (29 CFR 1926.555). There are also provisions in the general industry standards pertaining to the use of conveyors in specialized industries, such as Pulp, Paper, and Paperboard Mills (29 CFR 1910.261), Bakery Equipment (29 CFR 1910.263), and Sawmills (29 CFR 1910.265). The maritime standards for longshoring (29 CFR 1918) also contain conveyor requirements.

External: Twenty states have regulations relating to the safety of employees working near conveyors. Since the OSH Act requires the States to achieve an equally effective program, promulgation of an OSHA conveyor standard will require those States with State plans to develop or adopt a standard for conveyors.

Active Government Collaboration

OSHA will continue to discuss the scope and content of a conveyor standard with officials from State occupational safety and health departments.

Timetable

- Regulatory Analysis—Winter 1981.
- Notice to Reopen the Record—Winter 1981.
- Public Comment Period—60 days after Notice to Reopen.
- Final Rule—Spring 1982.
- Final Rule Effective—60 days after publication.

Available Documents

The following documents are available for review and copying at the

OSHA Technical Data Center, Room S-6212, Third Street and Constitution Avenue, N.W., Washington, DC 20210.
NPRM—39 FR 19507, June 3, 1974.

Transcript of public hearing held on October 15, 1974.

Written comments received relative to the NPRM.

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DOL—OSHA

Standard for Occupational Exposure to Asbestos (29 CFR 1910.1001*)

Legal Authority

Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) thinks this regulation is necessary to protect workers from the carcinogenic risks and other adverse health effects associated with exposure to asbestos.

Statement of Problem

A preliminary report indicated that 2.3 to 2.5 million employees have some degree of occupational exposure to asbestos. Of this total, 180,000 to 400,000 are in the construction industry and the remaining 2.1 million are in general industry. A significant number of these employees are exposed to airborne asbestos levels at or near OSHA's existing permissible exposure limit (2,000,000 fibers per cubic meter). This limit was established in 1972 for the limited purpose of reducing the incidence of asbestosis, rather than cancer.

The National Institute for Occupational Safety and Health (NIOSH) and other sources have provided data to OSHA which indicate that the present OSHA exposure limit may be inadequate to protect workers

from asbestos-related disease. Exposure to asbestos can cause asbestosis (a diffuse, nonmalignant, scarring of the lungs), lung cancer, and mesothelioma (a cancer of the chest and abdominal cavity linings of exposed workers). Recent epidemiologic evidence indicates these diseases may be induced at very low levels of exposure, and experimental data in animals suggest that all forms of asbestos present a health hazard.

OSHA is developing a proposal to revise the current standard for occupational exposure to asbestos. The regulation would set a permissible exposure limit (PEL) for employee exposure to asbestos, and affected industries would have the opportunity to implement control measures to achieve the PEL for their operations in the most cost-effective manner. Failure to promulgate new regulations will prolong the occurrence of disease, disability, and mortality associated with asbestos exposures.

Alternatives Under Consideration

The Agency is currently considering two alternative PELs: (A) a 500,000 fiber per cubic meter (fiber/m³) 8-month time-weighted average (TWA) with a 5,000,000 fiber/m³ ceiling (above which no employee may be exposed) and (B) a 100,000 fiber/m³ TWA with a 500,000 fiber/m³ ceiling. For each of these alternatives, other revisions to current provisions for engineering and work practice controls, hygiene facilities, medical surveillance, respirators, training, etc., may be included in the proposed regulations.

Studies indicate that all commercially available forms of asbestos are cancer-causing agents. Some scientists argue that all asbestos materials, therefore, should be regulated equally. Others believe that different asbestos forms display varying degrees of toxicity and that OSHA should develop separate standards based on data associated with each specific asbestos mineral. OSHA will consider the merits of each of these regulatory options.

Still another approach is to establish regulations for asbestos on the basis of the feasibility of compliance for different industries. Specific requirements of the standard would differ according to the feasibility of various control measures in different industries or processes, such as construction versus general industry.

We do not anticipate issuing an NPRM until late Winter 1980, and currently have no preferred alternative.

Summary of Benefits

Sectors Affected: Workers and establishments in manufacturing, retail trade, construction and service industries which produce or use asbestos-containing products; users of these products; establishments manufacturing substitutes for asbestos or asbestos-containing products; and the general public.

Affected industries include the primary manufacturers of asbestos products; secondary fabricators in the automobile aftermarket, shipbuilding and repair, and elsewhere; and the construction industry. The primary manufacturers are largely grouped in Standard Industrial Classification (SIC) Code 3292 (asbestos products), and many of these establishments also perform some secondary fabrication. Shipbuilding and repair is included in SIC Code 3731. The automobile aftermarket includes establishments which repair, resurface, and repackage such friction parts as brake shoes and clutch faces. The establishments involved are located in SIC Code 55 (automotive dealers and gasoline stations), SIC Code 3714 (motor vehicle parts and repair), and SIC Codes 7538 and 7539 (general automotive repair shops, and automotive repair shops not elsewhere classified). Other secondary fabricators are located in SIC Code 3293 (gaskets, packing, and sealing devices), and in many other SIC Codes too numerous to list here. Construction (SIC Codes 15-17) will also be affected where asbestos-containing products are used, such as roofing felt, asbestos-cement pipe, asbestos-cement siding, and some forms of floor tile.

Establishments which produce substitutes for asbestos or asbestos-containing products will also be affected. Although a complete enumeration of such substitutes and their respective SIC Codes is not included here, a partial listing is as follows: Substitutes for asbestos itself, in various uses, include fibrous glass (SIC Code 322), mica (SIC Code 329), graphite-carbon fibers (SIC Code 329), nylon (SIC Code 228), polypropylene (SIC Code 282), and others. A large number of substitutes also exist for asbestos-containing products. Iron or polyvinyl chloride pipe (produced in SIC Codes 33 and 307) can be substituted for asbestos-cement pipe. Substitutes for asbestos-cement siding include vinyl, aluminum, and wood siding; substitutes for vinyl-asbestos floor tile include pure

vinyl tile, carpeting, and hardwood flooring.

The direct benefit we expect from controlling exposure to asbestos is a reduction in the incidence and prevalence of the health effects cited in "Statement of Problem." OSHA has not yet completed an analysis of the benefits expected by reducing exposures to any of the alternative levels being considered. However, because of the large numbers of workers exposed, and the accumulated evidence on the toxicity of even low levels of asbestos exposure, the numbers are expected to be large. Such reductions in mortality and morbidity will result in reduced pain and suffering for employees, and in savings in medical expenses and lost output which would otherwise occur.

Indirect benefits from controlling asbestos exposures to either of the alternative levels will include reductions in the burden placed on such public support programs as Medicare and Medicaid, Welfare, and Worker's Compensation. In addition, improved worker health and safer working conditions are likely to reduce employee turnover and raise labor productivity. Finally, further controlling asbestos exposures will stimulate a search for asbestos substitutes and for alternatives to asbestos-containing products, and it will induce employers to innovate improved control technologies. With less asbestos and fewer asbestos products used, consumers will benefit as incidental asbestos exposures will decline.

Summary of Costs

Sectors Affected: Workers and establishments in manufacturing, retail trade, construction, and service industries which produce or use asbestos-containing products; and consumers of these products.

The costs of the regulatory options being considered are largely the capital and operating expenses which the regulated firms will incur in order to comply. Because these cost increases may raise the prices of asbestos-containing products, the quantity demanded of such products may decline. Higher prices of asbestos products would result in a switch to presently unregulated substitutes. To the extent that some of the substitutes have adverse health or safety effects, these will also be costs of the regulation. The extent of this substitution is under investigation and quantitative estimates are presently unavailable.

A preliminary evaluation of the potential impact on industry of regulation of asbestos was reported in the previous *Calendar of Federal*

Regulations (45 FR 36971, May 30, 1980). This evaluation is currently being updated by OSHA.

Indirect costs attributable to additional regulation hinge on the estimated impact of the use of substitute products and their likely consequences for health, safety, and product quality. Costs associated with the most stringent alternative could result in a significant use of substitutes for asbestos fibers and asbestos-containing products. The extent of this substitution is under investigation by OSHA and quantitative estimates are presently unavailable. We are also evaluating the health and safety effects of likely substitutes but, again, no qualitative or quantitative estimates can be ventured at this time.

Related Regulations and Actions

Internal: We are planning to modify the existing OSHA standard for asbestos, found at 29 CFR 1910.1001 of the Agency's General Industry Standards, which specifies an 8-hour time-weighted average of 2,000,000 fibers/m³. Other provisions of the standard address monitoring, medical surveillance, training, respirators, recordkeeping, protective clothing, and methods of compliance.

On October 7, 1975, OSHA published a notice proposing to revise the current asbestos standard and to reduce the PEL to 500,000 fibers/m³ (40 FR 3392). We are performing analyses of the economic and technological impact of that and alternative exposure levels.

External: Regulatory measures are under consideration by the Environmental Protection Agency (EPA) and the Consumer Product Safety Commission (CPSC). EPA/CPSC published an ANPRM for asbestos use in October 1979. EPA currently has a national emission standard for asbestos (38 FR 8820) and CPSC regulates uses of asbestos in certain consumer products.

Active Government Collaboration

An OSHA/Environmental Protection Agency/Consumer Product Safety Commission task group will coordinate development of an appropriate regulatory response to possible health hazards associated with asbestos. Information-sharing activities with other governmental agencies, such as the National Institute for Occupational Safety and Health, Food and Drug Administration, and Department of Agriculture, are underway.

Timetable

NPRM—Late Winter 1980.
Regulatory Analysis—Winter 1980.
Public Hearing—Following NPRM.
Public Comment Period—

Approximately 30-60 days following NPRM.

Final Rule—Winter 1981.

Final Rule Effective—To be determined.

Available Documents

"Occupational Exposure to Asbestos," NPRM (40 FR 47652 October 7, 1975), and comments received in response to the NPRM (OSHA Docket No. H-033).

"Criteria for a Recommended Standard . . . Occupational Exposure to Asbestos" (NIOSH-HEW, 1975); updated Criteria Document (1976).

"Workplace Exposure to Asbestos: Review and Recommendations" (NIOSH-OSHA), April, 1980.

These documents are available by mail and for review and copying at the OSHA Technical Data Center, Room S-6212, 200 Constitution Avenue, N.W., Washington, DC 20210. A fee is usually charged for copies of these documents.

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DOL-OSHA

Standard for Occupational Exposure to Chromium (29 CFR 1910.1000, Table 2-1*)

Legal Authority

Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) views this regulation as necessary to protect workers from the carcinogenic risks and other health effects associated with exposure to chromium compounds. A relatively large proportion of the work force is exposed to chromium compounds. The excessive risk of lung cancer observed at exposure levels near the current OSHA permissible exposure limit (PEL) and the upper respiratory tract irritation observed at exposure levels below the OSHA PEL demonstrate the urgent need for a reduction in the levels of occupational exposure.

Statement of Problem

As many as 2 million employees may be exposed to chromium compounds. In 1975, the National Institute for Occupational Safety and Health (NIOSH) submitted a criteria document to OSHA which recommended reducing

the current OSHA PELs for "carcinogenic" hexavalent chromium compounds to 1 microgram (μg) per cubic meter as an 8-hour time-weighted average. (The current OSHA PEL for hexavalent chromium compounds is 100 μg per cubic meter measured as chromic acid, CrO_3). Preliminary data indicate that over 135,000 workers are exposed to levels of hexavalent chromium greater than 10 μg per cubic meter as an 8-hour time-weighted average.

Chromium workers' risks include a wide variety of adverse health effects that are attributable to exposure to chromium and chromium compounds. There is evidence of dermatological effects (including skin ulceration and allergic contact dermatitis), respiratory effects (including perforation of the nasal membrane, nasal irritation, irritation of the throat, and respiratory disorders), and systemic effects (including liver damage, kidney abnormalities, erosion and discoloration of the teeth, perforation of the eardrum, and abdominal pain).

OSHA is investigating the numerous epidemiologic studies which indicate a large and significantly increased lung cancer risk for workers in the chromium chemical production industry. Additional studies suggest that a cancer hazard may also be present in the chromate pigment industry, the chromium plating industry, the ferrochromium alloy production industry, and chromate spray-painting operations. Experimental results in animals also suggest that chromium compounds are potential human carcinogens.

OSHA is developing a proposal to regulate occupational exposure to chromium as determined by available health and technological/economic feasibility data. The regulation would set a permissible exposure limit (PEL) for chromium, and affected industries would be permitted to implement engineering and work practices controls of their choice to comply with this PEL in the most cost-effective manner. The regulation may also require the employer to perform medical surveillance of exposed employees, periodic monitoring of the workplace environment, and employee training and education. Failure of OSHA to regulate expeditiously will prolong the occurrence of the incidence of diseases, disability, and mortality associated with exposures to chromium.

Alternatives Under Consideration

The Agency has under consideration a range of alternative performance PELs, including:

- (A) a 25 $\mu\text{g}/\text{m}^3$ 8-hour time-weighted average (TWA);
- (B) a 10 $\mu\text{g}/\text{m}^3$ TWA;
- (C) a 5 $\mu\text{g}/\text{m}^3$ TWA; and
- (D) the lowest technologically feasible TWA.

Appropriate and feasible ceiling limits, including 10, 25, or 50 $\mu\text{g}/\text{m}^3$, are also being considered. We may supplement the PEL with other provisions requiring engineering controls, work practices, and hygienic facilities. The Agency has asked for public comment on other possible alternatives for limiting workers' exposures to chromium.

Studies indicate that workers exposed to industrial processes involving exposure to chromium compounds have an increased risk of lung cancer. Some scientists argue that all chromium compounds should be presumed to be carcinogenic and regulated as such. Others believe that carcinogenic and noncarcinogenic forms of chromium can be identified, and that OSHA should develop separate standards. OSHA will consider the merits of each of these regulatory options.

Still another approach is to establish regulations for chromium on the basis of the feasibility of compliance for different industries to the extent that the protection of employee health is achieved or strengthened. Specific requirements of the standard would differ according to the feasibility of various control measures in different industries or processes where the potential for exposure exists.

Summary of Benefits

Sectors Affected: Industries in which workers are exposed to chromium; workers in those industries; manufacturing of chromium substitutes and substitute products; and the general public.

This regulation will affect industries in the following Standard Industrial classifications: 2819 (Chromate and Bichromates), 2816 (Pigments), 2851 (Paints), 2865 (Plastic colorants), 2893 (Printing inks), 2899 (Plating compounds), 2899 (Water treatment compounds), 2865 (Dyes), 2819 (Catalysts), 311 (Leather tanning and finishing), 3479 (Spray painting), 3471 (Electroplating), 1799 and 7692 (Welding), 3339 (Primary chromium refining), 1721 (Painting traffic lanes), 3312 (Stainless steel), and 5133 (Textiles).

Other than studies which indicate a potential cancer hazard among spray painters and chromium platers, OSHA has not yet collected information on the risks workers may face in industries which use chromium products. (Those

industry segments where no occupational exposure to chromium occurs (e.g., solid state chromium that is not ground, drilled, polished, or heated) will not be covered by the proposed regulation.) Some of the substitutes for chromium compounds, including lead, cadmium, and organic pigments, may also be potential hazards. Relative toxicities of substitutes are unknown.

Risks to the general public are not well documented. At this time, no estimates have been made of the magnitude of occupational disease attributable to exposure to chromium. The direct benefit of reducing occupational exposure to chromium, however, is a corresponding reduction in the number of cases of chromium-induced malignant and nonmalignant diseases, prolonged life expectancy for workers, and an increase in the lifetime earnings of workers. While a reduction in the acute health effects will be realized as soon as compliance is achieved, there will be a lag in the reduction of cancer incidence. Workers will continue to develop cancer from past exposures to chromium compounds because of the long latency period between exposure to chromium and the onset of clinical lung cancer. However, after this initial period of adjustment, the benefits of reduced exposure levels will continue to accrue over time.

OSHA also expects indirect benefits to occur as a result of controlling chromium exposures. Medical care costs for employees (including hospitalization and physician services) will be reduced to the extent that these costs are borne by public support programs such as Medicaid, Medicare, and workers' compensation. Another area where benefits can be expected is in the decreased number of social security disability payments and welfare payments to disabled workers and their families. Also, reduced absenteeism and a cleaner workplace may contribute to productivity gains. In addition, affected industries may develop technological innovations that may improve production processes in general.

OSHA will gather more data on the benefits of the regulatory alternatives prior to proposal of this regulation. No information is available, currently, on the benefits to firms that manufacture chemical substitutes and/or control technology.

Summary of Costs

Sectors Affected: Industries in which workers are exposed to chromium.

Those industries listed in the Summary of Benefits section and any others that may be identified after

further study will incur compliance costs as a result of this regulation.

The chart below compares initial estimates (in 1976 dollars) of the direct costs of compliance with two of the alternative PELs. The total annualized cost estimate is the sum of the annual operating costs and the annualized capital costs. Annualized capital costs were calculated with a standard capital recovery formula using an 18 percent rate of return and a 10-year average life of equipment.

Preliminary Cost Estimates in Millions of 1976 Dollars

Alternative	Capital	Annual operating	Total annualized
(A).....	*	*	*
(B).....	104	63	85
(C).....	*	*	*
(D).....	194	63	102

*No data currently available. We are in the process of estimating these costs.

These direct costs of compliance may result in several indirect effects. Analysis to date indicates that the chromate pigment (paints, dyes, inks) production and use industries will incur larger costs than other industrial sectors. Because there are competitive substitutes in this market, the demand for pigments containing chromium will probably decline. For the other pigments applications, metal finishing uses, and manufacture of stainless steel, there are no available substitutes for chromium. In these cases, preliminary analysis indicates that compliance costs will be passed on to consumers. Negligible price changes are projected for chromate production, because small compliance costs will be spread over a large volume of production, resulting in very small price increases per pound. Compliance in the catalyst production industry is not expected to generate significant price changes because the cost of a catalyst is a very small portion of the cost of the final product. Negligible price changes are also projected for the textile mill users because of low compliance costs.

Minor changes in the number and size distribution of firms are likely to occur in pigment production, water treatment compound formulation, and chrome alloy welding. OSHA will also examine the proposed regulation's effects on employment and international trade.

Related Regulations and Actions

Internal: The OSHA Air Contaminants Standards found at 29 CFR 1910.1000, Table Z-2, of the Agency's General Industry Standards, specify a maximum PEL of one milligram per 10 cubic meters (m^3) of air as chromic acid and chromates. This is the

equivalent of 100 $\mu g/m^3$ and is calculated as an 8-hour TWA. Table Z-1 specifies a ceiling exposure value of 0.1 milligram per cubic meter (mg/m^3) with a notation to avoid skin contact for tert-Butyl chromate as chromium trioxide. Table Z-1 also specifies a PEL of 0.5 mg/m^3 for soluble chromic and chromous salts and 1 mg/m^3 for metallic chromium and insoluble salts.

External: The Environmental Protection Agency (EPA) has issued the following regulations for the control of chromium pollution: (1) .05 mg/liter in drinking water, (2) 4 mg/liter effluent guideline in wood preserving, and (3) 1 mg/liter (daily maximum) and 0.5 mg/liter (30-day average) in the manufacture of chromium metal and ferroalloys, and 0.1 mg/liter (daily maximum) and 0.5 mg/liter (30-day average) as hexavalent chromium. In addition, EPA has proposed the following regulations: (1) 0.5 mg/liter in leachate from hazardous wastes, and (2) 4.2 mg/liter (daily maximum) and 1.6 mg/liter (30-day average) in electroplating effluents.

Active Government Collaboration

We are sharing information with the National Institute for Occupational Safety and Health, the Environmental Protection Agency, and the Consumer Product Safety Commission.

Timetable

NPRM—Late Fall 1980.

NPRM—Summer 1981.

Public Comment Period—Following NPRM.

Public Hearing—Following public comment period, if requested.

Regulatory Analysis—Summer 1981, if required.

Final Rule—Summer 1982.

Final Rule Effective—To be determined.

Available Documents

ANPRM—41 FR 18860, May 7, 1976.

"Criteria for a Recommended Standard . . . Occupational Exposure to Chromium (VI)," (NIOSH-HEW, 1975).

"Criteria for a Recommended Standard . . . Occupational Exposure to Chromic Acid," (NIOSH-HEW, 1973).

Public docket of the record of comments received in response to the 1976 and 1974 ANPRM's—H-033, H-054.

These documents are available by mail and for review and copying at the OSHA Technical Data Center, Room S-6212, Third Street and Constitution Avenue, N.W., Washington, DC 20210. A fee is usually charged for copies of these documents.

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DOL-OSHA

Standard for Occupational Exposure to Safety and Health Hazards in Grain Handling Facilities (29 CFR 1910)

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. § 655; Secretary of Labor's Order 8-76 (41 FR 25059), 29 CFR Part 1911.

Reason for Including This Entry

The Occupational Safety and Health Administration (OSHA) believes this rulemaking is important because we anticipate that this regulation will have a significant economic impact on the affected industries.

Statement of Problem

Workers in the grain handling industry are exposed to safety and health hazards associated with fires and explosions as well as organic dust, fungicides, and biological growths. For example, in late 1977 and early 1978, fires and explosions that occurred in grain handling facilities killed more than 60 persons and injured numerous others. OSHA responded to these disasters by issuing a grain elevator hazard alert for the purpose of providing industry with recommended safety and health guidelines. OSHA also contracted with the National Academy of Sciences to study the causes of these fires and explosions to increase our understanding of the problem and to obtain recommendations.

OSHA has also increased the number of inspections directed at recognized hazards within grain handling facilities, but enforcement personnel have encountered problems in applying existing OSHA standards to control the hazards in grain handling facilities since present standards do not address the most serious safety and health problems. Enforcement personnel believe that a gap exists because of the lack of OSHA standards directed specifically to grain handling facilities. Interested employee groups have also requested that OSHA develop grain handling facilities standards.

OSHA believes that continued absence of regulation will not be in the best interest of employers, employees, or the country. Although the annual number of fires and explosions involving grain elevators is highly variable, there has been no indication of any decrease in the number of explosions occurring in

grain handling facilities due to voluntary measures such as the grain elevator hazard alert. On the contrary, incidents have continued to occur even after the efforts put forth to inform affected groups of the hazards.

During 1979, there were at least 20 grain handling facilities that suffered serious fires or explosions in the United States, resulting in devastation, several deaths, and more than 15 injuries. Already in 1980 there have been at least 34 explosions or serious fires, with eleven deaths and many severe burn injuries.

In addition, there is no specific OSHA health standard protecting the 225,000 grain elevator workers and the additional 450,000 grain processing workers from the health hazards peculiar to grain handling facilities. These hazards include exposure to grain dust, pesticides, and the biological agents associated with grain. A substantial body of evidence demonstrates that exposures to these can result in various acute and chronic health effects, including allergies, dermatitis, respiratory disease, and cancer.

The present regulations that apply to these health hazards are incomplete. For example, OSHA currently regulates exposures to dust (permissible exposure level of 15 milligrams per cubic meter) under 29 CFR 1910.1000, Table Z-3. These regulations for "inert" or "nuisance dust," however, are not specific for organic dust such as grain dust, nor do they include provisions for exposure monitoring, personal protective equipment, or other control measures. Studies indicate that exposure to grain dust also subjects workers to toxicological hazards caused by fumigants used to protect the grain.

OSHA also has permissible exposure limits for some 160 substances which may be used as pesticides (29 CFR 1910.1000, Tables Z-1 and Z-2). However, these standards cover only a small percentage of the total number of pesticides manufactured and formulated in this country. In addition, they establish only airborne concentration limits and general control requirements for these 160 pesticides and do not address other protective measures, such as exposure monitoring, personal protective equipment, and medical surveillance. Thus, the existing standards are not comprehensive enough to fully control worker exposure to the health hazards of pesticides in grain handling operations.

OSHA does not currently regulate occupational exposures to fungi, molds, bacteria, or their toxins, which also

expose workers in grain handling facilities to significant risks.

Alternatives Under Consideration

(A) Safety Options: In addition to voluntary measures which have already been attempted, we can consider at least three options.

The first option is to promulgate specific standards for the grain handling industry. This approach would simplify enforcement activities and could minimize the possibility of fires and explosions in grain handling facilities. The standard would address new as well as existing facilities in a comprehensive manner. The major disadvantage would be the cost impact on operators of modifying their grain handling facilities.

The second option is to develop specific standards for new grain handling facilities but to include special, less stringent standards for existing facilities. This option would permit due consideration of the economic burden on older facilities by not requiring these facilities to meet the more stringent standards for new facilities.

The third option is to develop specific standards for new and major rehabilitated facilities with an exemption for all existing facilities. This approach would be similar to that taken by the Environmental Protection Agency in its regulation of pollutants for grain handling facilities. However, this option would only partially close the gap in current OSHA standards. It would complicate enforcement activities, and the major problems in older facilities would go unchecked.

(B) Health Options: OSHA is considering several major regulatory alternatives to deal with the health hazards in grain handling facilities.

The first option is to establish a permissible exposure limit (PEL) for grain dust, as well as safe work practices and procedures to control exposure to grain, biological agents, and pesticides. Within this option, there are several approaches that we may take. We may set the PEL at any one of a number of concentrations, depending on OSHA's evaluation of available data. In addition, the standard may be performance-oriented, allowing employers to choose the controls necessary to reduce exposures to the PEL, or may require specific controls. Furthermore, we may limit the standard to grain elevators, or expand it to cover grain handlers in processing facilities as well.

Another option would be to regulate the three health hazards associated with grain handling individually, rather than having one standard cover all three

hazards. Similarly, we could develop one standard but include specific provisions to address each of the three health hazards separately rather than together.

A third possibility would be to regulate both safety and health hazards in one comprehensive standard. Although this approach appears practical, many of the problems in safety and health differ greatly, and a combined standard would be extremely complex. This option could thus result in delaying promulgation of a health standard.

In addition to these options, OSHA is evaluating information received in response to the ANPRM (45 FR 10732, February 15, 1980), and the testimony received at the informal public meetings held in April and May 1980, to determine what other options may be viable. We will prepare a Regulatory Analysis of the options prior to any rulemaking activity.

Summary of Benefits

Sectors Affected: Grain handling facilities; workers in these facilities; and grain producers, shippers, and users.

The proposed regulation will affect the following industries: Cash grains (SIC 011), Crop preparation for market (SIC 0723), Grain mill products (SIC 204), Bakery products (SIC 205), Distilled liquor, except brandy (SIC 2085), Trucking, local and long distance (SIC 421), Farm product warehousing and storage (SIC 4221), Deep sea domestic transportation (SIC 442, 443, and 444), and Grain wholesale (SIC 5153). Grain handling facilities are scattered throughout the grain-producing States, with major bulk terminals at proximate domestic and export distribution points along the Great Lakes and on the east, west, and Gulf coasts.

Explosions and fires in the nation's 15,000 grain handling facilities continue to plague the industry despite substantial industry motivation to adopt preventive measures. During 1979, 20 major fires and explosions resulted in 15 injuries and several deaths, and one explosion in late 1977 caused 36 deaths. In such instances, property losses often exceed \$25 million (in 1979 dollars). Insurance premiums are high, and coverage is sometimes difficult to obtain. In addition, increasing evidence indicates the potential for serious health hazards resulting from worker exposure to grain dust as well as toxic fumigants and biologic agents in the dust. Establishing a PEL for grain dust or mandating safe work practices and procedures would reduce the allergies, dermatitis, respiratory disease, and

cancer associated with exposures in the industries regulated.

Catastrophic explosions occur at a rate of more than five per year and as many as 15 have occurred within a single year. Under such circumstances, secondary economic losses to producers and shippers could easily result in annual direct and indirect property losses exceeding \$200 million. Insufficient data presently make it difficult to estimate medical care costs, lost income, and other substantial personal losses in these cases, but these costs are also very substantial, as reflected by numerous liability case settlements. A recent grain elevator disaster case in Louisiana was settled out of court for \$25 million. It is apparent that the 225,000 grain elevator workers, the additional 450,000 grain processing workers, and their employers will benefit directly from any reduction in workplace hazards that is achieved by regulatory action. In fact, most affected parties seem to agree that action is needed.

Grain producers and consumers will benefit indirectly from the reduction in economic losses that currently are pushed back to the producers through lower grain prices or higher storage fees, or pushed forward to the consumer through higher prices. Also, dependents of workers and local communities will benefit indirectly from any reduction in grain industry accidents, which are frequently catastrophic to local communities.

Summary of Costs

Sectors Affected: Grain handling facilities; grain producers, shippers, and users; and OSHA.

Those industries listed in the Summary of Benefits section will incur compliance costs or direct costs as a result of this regulation.

Under application of any final regulation, older facilities may bear a disproportionately higher share of the compliance costs because they lack the safety provisions that are designed into newer facilities and because retrofitting is typically more expensive than building safety equipment into new facilities. Geographic impacts appear to be evenly spread among the grain handling facilities.

OSHA has not yet initiated studies to estimate direct costs, but anticipates that this proposal will be a "major action." Dust control including ventilation equipment is expensive, and probably will be necessary to reduce explosion and fire hazards throughout the grain facilities and to reduce health hazards at employee work stations. We will require grain dust monitoring

equipment and associated recordkeeping, along with preventive maintenance beyond that presently performed. These direct costs will be offset to some extent by reduced losses. We have not yet determined whether there will be differential costs for small businesses. There will be some consideration given to the size of the facility and frequency of use as it is affected by the regulations.

We anticipate that grain handlers would pass some costs on to grain producers, shippers, and users.

Employers will incur indirect overhead and administrative costs. Additionally, OSHA will divert some share of its resources from other standards development and enforcement activities. These indirect costs would be incurred by any program that can effectively control grain handling hazards.

Related Regulations and Actions

Internal: None.

External: The Department of Agriculture (USDA), and in particular the Federal Grain Inspection Service (FGIS), enforces the United States Grain Standards. The Environmental Protection Agency (EPA) regulates the application of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) which the EPA promulgated in 1972. The National Institute for Occupational Safety and Health and the Department of Energy are involved in grain dust research. The Council on Wage and Price Stability and the Office of Management and Budget will want to take active part in the economic analysis that will be required for the regulation.

Active Government Collaboration

OSHA has established working relationships with the Environmental Protection Agency (EPA) to determine EPA's jurisdiction regarding pesticides. We have held meetings with Department of Agriculture (USDA) Federal Grain Inspection Service personnel to obtain health hazard information regarding exposure monitoring of the Federal grain inspectors. The National Institute for Occupational Safety and Health (NIOSH) is providing data from in-house and contract studies on the health hazards of grain handling. Both the USDA and NIOSH participated in OSHA's informal public meetings during the spring of 1980.

The National Academy of Sciences panel on grain elevator explosions is coordinating criteria development for this rulemaking effort with EPA, the U.S. Coast Guard, USDA, and NIOSH.

Timetable

NPRM—Tentatively planned for late summer of 1981.
Public Hearings—Fall or winter 1981.
Regulatory Analysis—To be determined.

Available Documents

"Occupational Safety and Health Hazards in Grain Handling Facilities; Request for Comments and Information and Notice of Informal Public Meetings," 45 FR 10732, February 15, 1980.

Transcripts of informal public meetings held in April and May, 1980.

Public docket of the rulemaking record, Docket H-117.

These documents are available for review and copying at the OSHA Technical Data Center, Room S-6212, 200 Constitution Avenue, N.W., Washington, DC 20210.

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DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Flammability Standards for Crewmember Uniforms (14 CFR Parts 121*, 123*, 127*, and 135*)****Legal Authority**

Department of Transportation Act, § 6(c), 49 U.S.C. § 1655(c); Federal Aviation Act of 1958, as amended, §§ 313(a), 601, and 604, 49 U.S.C. §§ 1354(a), 1421, and 1424.

Reason for Including This Entry

The Federal Aviation Administration (FAA) thinks these proposed rules are important because they will impose a major increase in costs on the airline industry.

Statement of Problem

The FAA has found that many uniform items worn by flight

crewmembers are highly flammable when exposed to fire and other sources of ignition. Tests performed by the National Bureau of Standards of the Department of Commerce under contract to FAA established that fabrics presently used in making uniforms for crewmembers would not resist the effects of flame and heat flux in survivable cabin fires and could prevent crewmembers from helping passengers in such situations. Among other actions, the FAA is considering establishing standards of flammability and resistance to heat flux for materials used in crewmember uniforms.

Alternatives Under Consideration

Possible alternatives to establishing flammability standards for crewmembers are:

(A) No regulation; do not require uniforms worn by crewmembers to meet any flammability standard. Current materials used to make uniforms provide maximum comfort, a range of styling, and are easily cleaned. However, they are constructed of conventional fabric that is flammable and may provide inadequate protective clothing. Without protective clothing, crewmembers may be incapable of performing necessary functions in certain emergencies.

(B) Require crewmembers to put on special garments such as firemen wear in case of a fire. This option was fully explored and reported in FAA Report No. FAA-RD-77-18. Although the garment provides maximum protection from flame and radiant heat, it is very expensive and difficult to put on.

(C) Require that crewmember uniforms meet a standard similar to the current children's sleepwear standards. This is a performance standard that requires that materials used for children's sleepwear resist ignition when exposed to flame, and self-extinguish rapidly. Materials which satisfy the children's sleepwear standard must be flame-resistant, but need not protect the wearer from radiant heat transferred through clothing.

(D) Require crewmember uniforms to meet a test measuring resistance to ignition and ability to self-extinguish as well as a standard designed to protect the wearer from injury from the transfer of radiant heat through clothing.

We regard Alternative D as the most desirable alternative, since crewmembers must be adequately protected from both flame and radiant heat injury if they are to perform their duties adequately in an emergency.

Currently, technology in the textile industry permits the establishment of a standard that protects wearers from

both flame and radiant heat. Most fabrics can be treated to increase their protective qualities. In addition, fire-retardant wool and cotton are available in a wide range of colors and weights. These fire-retardant fabrics are woven of both natural and synthetic fire-retardant fibers to maximize wearability and protection. Synthetic fabrics such as Nomex are available in a variety of weights. Although these synthetics provide the greatest protection to the wearer, their range is somewhat limited due to problems with colorfastness. In the past, Nomex has been used primarily by fire and police agencies, and color choice was not a problem. If demand for more variety increases, a wider range of colors may be developed.

Although certain fabrics such as polyester have limited fire-retardant qualities, other fabrics of similar weight and purpose may be substituted. Fire-retardant fabrics are available that are comparable to conventional fabrics with respect to durability, color choice, style and tailoring capability, and fabric weight range. The fire retardant properties of some fabrics can be retained through the useful life of the garment. For other fabrics, it could last through at least 50 wash/cleaning cycles.

Summary of Benefits

Sectors Affected: Air carrier flight crewmembers; and air passengers.

The benefits expected from the proposed flammability standards would be increased safety for crewmembers and passengers. Flightcrews would be safer in case of fire, which would increase safety for the traveling public.

Summary of Costs

Sectors Affected: Manufacturers of textile mill products and apparel, and other textile products; the air transportation industry; and air passengers.

The cost per uniform would increase, causing an economic impact on the user or purchaser. The U.S. textile and clothing industry would be affected by the economic impact of producing new materials and clothing made from these materials. The air carrier industry would bear the cost, possibly through increased airfare, which would directly affect air passengers. No specific cost information is available at this time. We will include it in the Regulatory Analysis.

Related Regulations and Actions

Internal: Part 121 of the Federal Aviation Regulations and FAA Report Nos. FAA-RD-75-176 and FAA-RD-77-18.

External: Federal Rule, Flammability Standard for Children's Sleepwear, 16 CFR 1616.5(a)(b)(c)(i)(ii). State and local governments have established clothing standards for some hazardous professions, such as those for firemen.

Active Government Collaboration

The National Transportation Safety Board's comments on Notices 75-13 and 75-13A recommended that the scope be expanded to include clothing of all crewmembers to give them the same protection as flight attendants. The National Bureau of Standards developed the technical basis for the flammability standards.

Timetable

The FAA is proposing standards to be listed in appendices to 14 CFR Parts 121, 123, 127, and 135. The following are future action dates:

NPRM—July 1981.

Comment Periods—For hearing and for ANPRM 75-13 and Notices 75-13A and 75-13B, beginning December 16, 1980; for NPRM, 90 to 120 days after issuance.

Draft Regulatory Analysis—will accompany NPRM.

Final Rule—Pending.

Effective Date of Regulation—36 months after we issue amendment.

Available Documents

ANPRM 75-13 (40 FR 11737), published March 13, 1975; Notice 75-13A (45 FR 2775) published April 24, 1980 reopening the comment period; and Notice 75-13B (45 FR 55760) published August 21, 1980 extending the comment period are available from the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rule Docket (AGC-24), Docket No. 14451, Federal Aviation Administration, 800 Independence Ave., S.W., Washington, DC 20591.

You can get copies of FAA reports entitled "Development of a Proposed Flammability Standard for Commercial Transport Flight Attendant Uniforms," Report No. FAA-RD-75-176, and "Development of a Fire Protective Overgarment for Use by Air Carrier Flight Attendants," Report No. FAA-RD-77-18, from the National Technical Information Service, Springfield, VA 22161.

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DOT—Federal Highway Administration

Hours of Service of Drivers (49 CFR Part 395*)

Legal Authority

The Motor Carrier Act of 1935 (Part II of the Interstate Commerce Act), 49 U.S.C. § 304; Department of Transportation Act, § 3, 49 U.S.C. § 1655.

Reason for Including This Entry

The Federal Highway Administration (FHWA) thinks this rule is important because any change in the hours of service regulations that restricts when a driver may work could have a major economic impact on both the trucking industry and consumers, causing considerable controversy.

Statement of Problem

The FHWA is considering revising the regulations that limit the driving hours and prescribe rest periods for drivers of vehicles engaged in interstate or foreign commerce. It is taking this action in response to:

- Numerous requests from public interest groups, labor organizations, motor carriers, and individual drivers.
- Research studies showing driver fatigue to be a cause in commercial motor vehicle accidents.
- A 1974 decision of a Federal District Court involving a suit brought by PROD, Inc., an interest group representing some commercial truck drivers who sought judicial review of FHWA's failure to initiate rulemaking proceedings on the hours of service regulations. The suit was dismissed by the court to allow FHWA to begin rulemaking. The dismissal allowed PROD to reinstate the suit in 18 months if FHWA had failed to initiate rulemaking.

The objective of this regulation is to increase the overall safety of the Nation's highways through the revision of current regulations governing the hours of service for drivers of commercial trucks and buses engaged in interstate or foreign commerce.

The FHWA currently limits, by regulation, the hours of service for drivers, as part of its overall responsibility for the safe operation of motor carriers. Research studies dating from the mid-1930s have indicated that fatigue causes narrowing of vision and inattention, which make drivers miss signs and signals, and result in highway accidents. In 1978, more than 34,000 commercial motor vehicle accidents were reported to the Bureau of Motor Carrier Safety; many of these were single-vehicle accidents and other accidents that involved running off of the road without apparent cause. The

FHWA suspects that fatigue was a factor in many of these cases.

If we do not take regulatory action, we may be unable to prevent fatigued drivers from traveling the Nation's highways, thereby allowing a potentially dangerous situation to continue.

Alternatives Under Consideration

Some of the alternatives to current regulations that FHWA is studying include longer off-duty periods for drivers between driving or work assignments and mandatory rest periods during long driving assignments. FHWA is also considering simplifying the methods drivers use to record hours of service, in order to reduce the paperwork burden on both the driver and the motor carrier companies. In addition, FHWA is considering requirements related to the following: maximum weekly work hours; maximum on-duty time; minimum off-duty time during assignments; driving hours or mileage limitations; driver relief periods between assignments; elimination of intermittent off-duty periods which extend the overall length of the work day; mandatory meal periods; and special provisions for night-driving assignments.

Providing simpler methods for recording hours of service would eliminate the industry-wide complaints about the drivers' logs, and may increase compliance. The other proposed regulatory actions would provide stricter controls over drivers' work habits, but they would not necessarily increase compliance.

Summary of Benefits

Sectors Affected: Users of highways, including bus drivers, truckers, and the general public; the interstate trucking industry; interstate bus lines and bus charter services; shippers and users of goods transported by truck or bus; and passengers and tour groups that normally travel by bus.

FHWA believes that revisions to regulations on the hours of service for drivers would help reduce driver fatigue and ensure alertness, thereby eliminating the risk of fatigue-related accidents. This, in turn, would increase the overall safety of the Nation's highways.

The FHWA expects that the revised regulation would have economic benefits, because there would be fewer fatalities and injuries and less property damage caused by highway accidents. In addition, motor carriers' operating expenses would be reduced because of fewer accidents, lower insurance premiums, and reduced compensation payments. FHWA does not have an

estimate of the savings that would occur as a result of these regulations. Many factors impair drivers' alertness. The Agency cannot distinguish between those accidents that would be prevented by changing these regulations and those that would be prevented by taking other actions.

Summary of Costs

Sectors Affected: Interstate trucking industry; interstate bus lines and bus charter services; interstate truckers and bus drivers; shippers and users of goods transported by truck or bus; and passengers and tour groups that normally travel by bus.

FHWA expects that the costs resulting from these regulations may be high. Revising the hours of service regulations to restrict the hours that a driver may work could increase payroll expenses for motor carriers because they may need additional drivers. This could increase other operating expenses for motor carriers, resulting in increased costs to passengers and shippers for truck and bus transportation and, eventually, for goods consumed. The increased expenses to motor carriers would, however, be offset by such items as reduced vehicle downtime, minimized delays in cargo delivery, and lower insurance premiums that could result from fewer accidents.

Related Regulations and Actions

Internal: Current FHWA regulations restrict hours of service of drivers (49 CFR Part 395).

FHWA has initiated a test program, which began May 1, 1980, to evaluate alternatives to drivers' daily logs.

External: None.

Active Government Collaboration

None.

Timetable

NPRM—January 1981.

Regulatory Analysis—Will accompany NPRM.

Available Documents

ANPRM—41 FR 6275, February 12, 1976.

Second ANPRM—43 FR 21905, May 22, 1978.

Bureau of Motor Carrier Safety Docket MC-70-1.

Sixteen reports or professional journal articles are referenced in the second ANPRM, 43 FR 21905, May 22, 1978.

PROD, Inc., et al. v. Brinegar, Civil Action 2098-73, U.S. District Court, District of Columbia (May 20, 1974). This is a decision in which the District Court dismissed, without prejudice to renew in 18 months, a suit brought against DOT

by PROD, Inc., a group representing professional drivers. The suit sought judicial review of the FHWA's failure to institute rulemaking proceedings on "hours of service."

"Effects of Hours of Service, Regularity of Schedules, and Cargo Loading on Truck and Bus Driver Fatigue," October 1978, available through the National Technical Information Service, Springfield, VA 22161 (DOT HS-803799).

Bureau of Motor Carrier Safety dockets are available at the Federal Highway Administration, Room 3402, 400 Seventh Street, S.W., Washington, DC 20590.

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DOT—FHWA

Minimum Cab Space Dimensions (49 CFR Part 393*)

Legal Authority

The Motor Carrier Act of 1935 (Part II of the Interstate Commerce Act), 49 U.S.C. § 304; Department of Transportation Act, 49 U.S.C. § 1655.

Reason for Including This Entry

The Federal Highway Administration (FHWA) thinks this rule is important because it could necessitate redesigning the cab portion of a truck to make it larger for safety purposes. This may reduce the amount of cargo space available and possibly increase costs for the trucking industry.

Statement of Problem

All States and the District of Columbia impose restrictions on total vehicle length for trucks. Most of these restrictions range from 55 to 65 feet; 75 feet is the maximum length that any State allows. However, there are no regulations for the minimum size of the cab portion of trucks. Thus, drivers of heavy commercial vehicles must sometimes drive trucks with cab dimensions that make them uncomfortable, thereby increasing fatigue and the likelihood of an accident. The extent of the problem is unknown.

FHWA's preliminary investigations suggest that the older truck cabs, whose dimensions may cause problems, are being phased out. However, reports from drivers' organizations have stated that vehicle manufacturers, in response to

customer requests, are manufacturing new trucks with smaller cab dimensions in order to enlarge the space available for cargo. Reducing the size of the cab can make the driver uncomfortable and the engine less accessible for inspection. It can also place excessive weight on the steering axle, making the truck harder to steer and overloading the front tires, which can cause flats. Some studies have linked highway accidents with these conditions.

If the size of the cab actually increases accident rates by causing driver fatigue, failure to require adequate cab size through regulation could result in continued accidents.

Alternatives Under Consideration

The alternatives in this case are to regulate or not to regulate. (Any regulations would apply only to new trucks.) If, in fact, there is a serious safety problem related to cab size, a possible alternative to rulemaking is to propose voluntary model advisory standards for minimum cab space dimensions. The National Highway Safety Advisory Committee Report of March 1977 recommended this approach.

Within the rulemaking process, certain factors should be considered. One is whether certain types of weight classes of vehicles should be exempted from the regulations. Another is whether to restrict manufacturers from placing the cabs over the engine. A third is the safety of different length cabs matched with different length trailers.

If the FHWA either suggests voluntary standards or pursues the regulatory route, the driver would have a better driving environment, which would lead to safer vehicle operation. Voluntary standards would give the industry an opportunity to comply without the need for Federal regulation in this area. If the industry failed to comply, regulation would be necessary, with the associated disadvantages of additional recordkeeping requirements and reporting burdens. Any regulation would have to take into account the factors described above. The obvious advantage of the regulation is that it would ensure compliance.

Summary of Benefits

Sectors Affected: Users of highways, including the interstate trucking industry, truckers, and the general public.

The benefit of this regulatory action would be to reduce wheel and axle overloading and protect the driver's work place, thereby reducing the risk of accidents to all highway users. FHWA does not know at this time what dollar

savings to expect as a result of reduced accident involvement or avoidance. The percentage of accidents that would be avoided through regulatory action is unknown, but the risk would be reduced.

Summary of Costs

Sectors Affected: Manufacturing of truck cabs; the interstate trucking industry; and shippers and users of goods transported by truck.

These regulations may necessitate substantially redesigning the cab portion of some trucks. Initially, the manufacturers would bear the financial burden of accomplishing this redesign and retooling. This would lead to an increase in the cost of trucks to users. Unless the States change the allowable overall length of a tractor/semi-trailer cargo space, this could result in smaller loads and the need for additional vehicles and drivers to ship the same amount of goods. All of these factors could increase shipping costs and eventually result in consumer price increases for all items carried by truck. Specific estimates of the costs are not available at this time.

Related Regulations and Actions

Internal: None.

External: Fifty States and the District of Columbia have regulations limiting overall vehicle length.

Active Government Collaboration

None.

Timetable

Further action to be determined.

Available Documents

ANPRM—43 FR 6273, February 14, 1978.

Bureau of Motor Carrier Safety Docket MC-79.

"Interior Cab Dimensions of Heavy Duty Motor Vehicles," February 1980, in the Bureau of Motor Carrier Safety Docket MC-79.

"Driver Profile and Body (Anthropometric) Data on Interstate Truck Driver," April 1977, available through the National Technical Information Service, Springfield, VA 22161 (PB273514/AS).

"A Study of Heat, Noise, and Vibration in Relation to Driver Performance and Physiological Status," October 1974, available through the National Technical Information Service, Springfield, VA 22161 (PB238829).

"Cause and Control of Commercial Vehicle Accidents Involving Front Tire Failure," August 1975, available through the National Technical Information

Service, Springfield, VA 22161 (PB245863).

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DOT—Federal Railroad Administration

Alerting Lights Display—Locomotives (49 CFR Part 222)

Legal Authority

Federal Railroad Safety Act of 1970, § 202(a), 45 U.S.C. § 431(a); Locomotive Inspection Act, 45 U.S.C. § 22 *et seq.*

Reason for Including This Entry

The Federal Railroad Administration (FRA) has included this entry because of the degree of controversy the ANPRM and the NPRM evoked and because of the cost impact on the railroad industry.

Statement of Problem

Each year, hundreds of persons are killed and thousands are injured in accidents at rail-highway grade crossings (the intersections of railroad tracks and highways at the same level). The National Grade Crossing Inventory maintained by the Department of Transportation (DOT) indicates the following number of grade crossings: 217,068 public; 140,653 private; and 3,609 pedestrian. During the period from 1968 to 1978, there was an annual average of 1,232 fatalities and 3,803 injuries resulting from accidents of all types at rail-highway grade crossings. In 1978, the most current year for which data have been analyzed, there was a total of 12,435 crossing accidents of all types, resulting in 1,021 fatalities and 4,256 injuries. The majority of accidents, injuries, and fatalities occurred at public crossings.

To reduce the number of these accidents, the FRA is proposing to require railroad locomotives to display highly conspicuous alerting lights at public rail-highway grade crossings. FRA is taking this action at the present time in response to: (1) congressional interest as reflected in legislation proposed during the past several sessions to require strobe lights on locomotives, and (2) technological advances in types of lighting devices.

FRA believes that corrective action is necessary since the probable consequence of inaction would be a continuation of the current accident level.

Alternatives Under Consideration

FRA has considered several alternatives to the status quo.

(A) This alternative, which is the one FRA is proposing, would require railroad locomotives to display highly conspicuous alerting lights at public rail-highway grade crossings. The lights would provide additional warning to motorists who are approaching public grade crossings. A specific requirement would result in a uniform system of warning lights that motorists would associate with the presence of a railroad locomotive. One possible disadvantage is that the locomotive engineer may be distracted by the reflection caused by a pulsating light.

(B) Alternative (B) would rely on voluntary action by the railroads to install and display alerting lights on railroad locomotives. In an attempt to stimulate such voluntary action, FRA would use existing studies and data indicating that highly conspicuous alerting lights reduce accidents. There are drawbacks to this alternative. First, many railroads probably would not install alerting lights. Many railroads question the effectiveness of the lights, and others do not want to commit the necessary funds. If motorists are to associate alerting lights with the presence of a locomotive, the lighting system must be uniform. Second, railroads might install lights with differing characteristics (color, location, flash rate, and intensity) on the locomotives. Again, uniformity of the lights used would improve the effectiveness of the system for motorists.

(C) Alternative (C) is to install active warning systems (lights, bells, and gates) at all public rail-highway grade crossings.

(D) Alternative (D) would be to eliminate all public crossings by separating public highways from rail lines (by overpasses and underpasses).

Alternatives (C) and (D) were less cost-effective than alerting lights and prohibitively expensive—approximately \$4 billion for active warning systems and \$200 billion for grade separation (1979 dollars). The FRA believes Alternative (A) is the most cost-effective and readily available overall approach. It would result in a uniform alerting device that a motorist would associate with the presence of a locomotive. Active warning systems and grade separations will continue to be superior

options, however, at specific high-risk crossings.

Summary of Benefits

Sectors Affected: Users of highways; and the railroad transportation industry.

The proposed rule would affect the driving public because of the anticipated reduction in rail-highway grade crossing accidents, injuries, and fatalities. Accident reduction would also have a beneficial impact on the railroad industry by reducing the costs associated with rail-highway grade crossing accidents.

A 1978 study done for the FRA, "Analysis for NPRM—Strobe Lights on Locomotives" (from here on referred to as the Study), estimated that 124 fatalities, 566 injuries, and 1,414 accidents would be avoided each year if an alerting lights system using xenon strobe lights were used. The Study estimated the total annual benefit to be \$65 million, produced by the anticipated accident reduction. The net present value benefit, including all societal benefits, was estimated to be \$432.6 million (with present value calculations based on a 20-year project evaluation and a 10 percent discount rate). The net present value benefit is the estimated dollar savings for the full 20-year period, after subtracting the costs involved, and calculating a discount to reflect the current value of future cost savings. The Study used actual and estimated cost figures for evaluation of fatalities, injuries, property damage, lost use of the rail line, and other costs. The probable decrease in injuries and fatalities is of great importance in itself, in addition to the economic benefits.

Summary of Costs

Sectors Affected: The railroad transportation industry; shippers and users of goods transported by rail; and rail passengers.

The railroad industry would absorb the initial cost of installing alerting lights. The proposed rule may affect shippers and the general public if the short-term costs to railroads exceed the short-term benefits, because this could lead to rate increases.

The initial cost of installing alerting lights would be approximately \$21 million over a 3-year period (1978 dollars). This would be substantially offset by the anticipated reduction in costs related to grade crossing accidents. In the short-term, costs might exceed benefits. According to the Study cited earlier, the estimated present value cost of application and subsequent maintenance of an alerting lights system using xenon strobe lights is \$32.3 million

(based on a 20-year evaluation), while the economic impact is estimated to be a benefit of \$61.4 million to the railroads.

If the short-term costs due to the capital expense of installing alerting lights exceed the short-term benefits, the financial condition of the railroad industry could necessitate recovering these costs through rate increases. (See "A Prospectus for Change in the Freight Railroad Industry," a preliminary report by the Secretary of Transportation, October 1978.) Since the cost of installing alerting lights is only \$21 million over a 3-year period, the effect on rates would not be large.

Related Regulations and Actions

Internal: FRA requires that all grade crossing accidents be reported (49 CFR Part 225). FRA publishes each year a "Rail-Highway Grade Crossing Accident/Incident Bulletin." In addition, FRA has published and periodically updates the National Grade Crossing Inventory. Railroad locomotives are required by 49 CFR 230.231 to have a headlight. In addition, the Federal Highway Administration has authority under 23 U.S.C. § 130 to fund the construction costs of projects that eliminate hazards at rail-highway grade crossings.

External: None.

Active Government Collaboration

None.

Timetable

Final Rule—January 1981.

Available Documents

NPRM—44 FR 34982, June 18, 1979.
ANPRM—43 FR 9324, March 7, 1978.
Draft Regulatory Analysis.

"A Prospectus for Change in the Freight Railroad Industry," October 1978, a preliminary report by the Secretary of Transportation.

Analysis for NPRM—"Strobe Lights on Locomotives," Input Output Computer Services, Inc., May 26, 1978.

DOT Transportation Systems Center Study—"Grade Crossing Resource Allocation for Strobe Lights and Conventional Warning Systems," November 16, 1978.

Documents are available from Agency Contact.

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DOT—National Highway Traffic Safety Administration

Crashworthiness Ratings (49 CFR Chapter 5)

Legal Authority

Motor Vehicle Information and Cost Savings Act, 15 U.S.C. § 1941; National Traffic and Motor Vehicle Safety Act, 15 U.S.C. § 1401.

Reason for Including This Entry

The National Highway Traffic Safety Administration (NHTSA) thinks that this rulemaking is important because of the possible impact on manufacturers, the interest shown by consumers, and the potentially significant effect of the rule on the automotive marketplace.

Statement of Problem

Consumers do not have objective, comprehensive information available to them on the comparative ability of cars to protect them in a crash. Such information would help consumers make informed decisions about buying cars and would foster competition among manufacturers to produce safer cars.

To help consumers make informed purchasing decisions, congress enacted the Motor Vehicle Information and Cost Savings Act of 1972. Title II of the Act directs NHTSA to develop ways to assess the ability of a car to protect its occupants in a crash (crashworthiness), the susceptibility of a car to property damage in a crash (damageability), and the ease of diagnosing and repairing vehicle systems that fail in use or are damaged in a crash (repairability).

The Act further directs NHTSA to develop methods of providing information on crashworthiness, damageability, and repairability to the public in a simple and readily understandable form to facilitate comparisons among various makes and models of cars.

The Act also directs the Agency to require car dealers to distribute information to prospective purchasers that compares differences in insurance costs for different makes and models of cars based upon differences in damageability and crashworthiness.

NHTSA has begun an experimental program to assess the crashworthiness of cars in representative, standardized crash tests. The Agency's testing of 1979 and 1980 makes and models has demonstrated that there are significant differences in the ability of cars to protect their occupants in a crash.

Alternatives Under Consideration

The Agency is currently considering several alternative ways of carrying out

its statutory mandate to provide consumers with comparative information rating the crashworthiness of cars.

(A) Under Alternative (A) the Agency would conduct all of the crash tests needed to rate the cars and provide the information to manufacturers for dissemination to prospective purchasers. Although this approach would place all the testing under the full, direct control of the Agency, it would require an expensive test program. More importantly, the Agency would have to obtain the cars for testing after they have been publicly offered for sale to ensure that they are representative of cars available to the public rather than pre-production prototypes. Thus, the comparative ratings could not be distributed at the beginning of the model year to help consumers make their buying decisions.

(B) Alternative (B) would require manufacturers to develop the crashworthiness data and distribute it to consumers. Manufacturers already conduct crash testing to determine if their cars comply with the Federal motor vehicle safety standards. By conducting those tests at higher speeds (e.g., 35 mph rather than 30 mph as set in the current safety standards), they will be able both to determine if they comply with the Federal safety standards and to rate the crashworthiness of their cars. Since the compliance crash testing must be completed before the cars are offered for sale, manufacturers would be able to have the crashworthiness ratings available for prospective purchasers at the beginning of the model year.

Summary of Benefits

Sectors Affected: Purchasers of new cars.

NHTSA is developing an analysis of the benefits for the proposed rulemaking. One of the chief benefits would be to provide prospective purchasers of new cars with objective information about the crashworthiness of different makes and models to enable them to make informed buying decisions. The crashworthiness rating should foster competition among manufacturers to produce cars that provide increased levels of protection in a crash.

Summary of Costs

Sectors Affected: Manufacturers of cars; purchasers of new cars.

NHTSA is developing an analysis of the expected costs of the proposed rulemaking. If manufacturers are required to develop the crashworthiness data, they would have to conduct crash tests to rate the ability of their cars to

protect occupants in a crash. Manufacturers could combine that crash testing with the testing they already do to certify compliance with Federal safety standards. Thus, the additional crash test costs for all manufacturers should be limited, particularly for manufacturers who have designed their cars to provide more than the 30 mph level of protection required by the current Federal safety standards.

Related Regulations and Actions

Internal: Insurance Cost Information Regulation (49 CFR Part 582).

External: None.

Active Government Collaboration

None.

Timetable

NPRM—January 1981.

Preliminary Regulatory Analysis—Will accompany NPRM.

Available Documents

The results of the Agency's series of tests rating the crashworthiness of 1979 and 1980 model cars have been placed in Docket No. 79-19. All documents are available for review in the Docket Section, NHTSA, Room 5108, 400 Seventh Street, S.W., Washington, DC 20590.

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DOT—NHTSA

Heavy Duty Vehicle Brake Systems (49 CFR Parts 571.105*, 571.121*)

Legal Authority

National Traffic and Motor Vehicle Safety Act, § 103, 15 U.S.C. § 1392.

Reason for Including This Entry

The National Highway Traffic Safety Administration (NHTSA) thinks this rule is important because of the level of public and Congressional interest.

Statement of Problem

Various Federal safety standards issued by NHTSA apply to truck, bus, and trailer brake systems (Federal Motor Vehicle Safety Standards No. 106, "Brake Hoses;" No. 116, "Brake Fluids;" and No. 121, "Air Brake Systems"). Although these standards have improved heavy truck braking performance considerably, problems with braking systems remain, and heavy

truck accident rates are increasing. NHTSA is examining the long-range issues related to braking systems for trucks, buses, and tractor-trailers.

The number of persons killed while riding in heavy trucks increased from 847 in 1975 to 1,248 in 1978—an increase of 47 percent. In addition, the number of deaths involving automobiles and heavy trucks increased from 2,086 in 1975 to 2,959 in 1978. Roadside inspections, which the Bureau of Motor Carrier Safety (BMCS) of the Federal Highway Administration (FHWA) conducted, indicate an unacceptably high number of poorly maintained trucks. In a recent BMCS inspection survey of 273 heavy trucks, the inspectors put 57 percent of the trucks out of service. Half of these violations were attributable to the braking system. In another BMCS survey of 1,400 vehicles, 51 percent had brakes that were not adjusted properly; inspectors found that 17 percent of these vehicles were unsafe for highway operation.

If the Agency does not take any action, the number of deaths resulting from accidents involving heavy trucks is likely to continue.

Alternatives Under Consideration

NHTSA has issued and ANPRM to solicit comments on the Agency's long-range course of action regarding medium- and heavy-duty truck braking performance. Although it is too early in the regulatory process to identify specific alternatives and their advantages and disadvantages, general areas of consideration include:

(A) Establishing performance requirements in one or more of the following areas: (1) brake adjustment; (2) stability of the vehicle during stopping; (3) fade resistance, or stopping power for brakes exposed to high brake temperatures caused by prolonged or severe use; (4) contamination of brake systems by road dust, water, etc.; and (5) reliability and maintainability. The NHTSA standards apply to types of vehicles rather than to how they are used. Therefore, rulemaking related to devices that act on the engine rather than on the brakes to help slow the vehicle during mountain-descents will probably be up to the BMCS or to State governments. These agencies have the authority to regulate vehicles in use.

(B) Other possible approaches include: (1) issuing a public advisory notice on ways to improve fade resistance; (2) establishing criteria for total brake system performance and stopping distance capability; (3) increasing State vehicle inspection programs; (4) teaching drivers how to avoid accidents; and (5) requiring

vehicle manufacturers to improve the design of vehicles to enhance the driver's vision and ability to brake rapidly.

Summary of Benefits

Sectors Affected: Users of highways, including the trucking industry, truckers, bus charter services, bus drivers, and the general public; and manufacturers of trucks, buses, tractor-trailers, and braking systems. The benefits this rulemaking would achieve depend on specific performance requirements, which have not yet been determined. The chief benefit would be a reduction in the number of accidents related to the braking systems in heavy trucks. The purpose of the ANPRM is to make the public aware of NHTSA's concerns, to outline our research plans, and to solicit relevant comments from the trucking industry.

Summary of Costs

Sectors Affected: Manufacturers of trucks, buses, tractor-trailers and braking systems; purchasers of buses, trucks, and tractor trailers; and the general public. Generally, the manufacturers would incur costs for designing new brake systems or components. Ultimately, such costs will be passed on to the consumer public through higher prices. For example, if requirements are set on brake adjustment, manufacturers may have to use automatic adjusters in their brake systems. Automatic adjusters would cost truck buyers about \$50 to \$75 per axle more than manual adjusters. The initial cost of automatic adjusters would be more than offset by the savings in brake system maintenance and tire wear. However, until the regulatory requirements are defined, it is not possible to specify the overall economic impact.

Related Regulations and Actions

Internal: NHTSA issued an ANPRM (44 FR 9783) on February 15, 1979. The ANPRM proposed establishing a new Air Brake Standard (No. 130) for trucks, buses, and trailers over 10,000 pounds gross vehicle weight rating (GVWR) to replace Air Brake Standard No. 121. The new Air Brake Standard would reinstate a stopping distance requirement to replace the one invalidated by the decision of the U.S. Court of Appeals for the Ninth Circuit in *PACCAR v. NHTSA and Department of Transportation*, 573 F. 2d 632 (9th Cir. 1978), cert denied, 439 U.S. 862 (Oct. 2, 1978). NHTSA also issued a final rule on June 2, 1980 (45 FR 38380) that amends existing Standard No. 121. That amendment requires all vehicles with a GVWR over 10,000

pounds to have service brakes on all wheels. On June 13, 1980, the Agency granted a California Highway Patrol petition (45 FR 41468) asking the Agency to begin rulemaking to amend the parking brake requirements of Standard No. 121.

External: None.

Active Government Collaboration

None.

Timetable

NPRM—To be determined.

Preliminary Regulatory Analysis—

Will accompany NPRM.

Final Rule—To be determined.

Available Documents

ANPRM—45 FR 13155, February 28, 1980.

NHTSA Docket No. 79-03, Notice 03.

All documents available for review in the Docket Section, NHTSA, Room 5108, 400 Seventh Street, S.W., Washington, DC 20590.

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DOT—NHTSA

Pedestrian Protection (49 CFR Part 571*)

Legal Authority

National Traffic and Motor Vehicle Safety Act, § 103, 15 U.S.C. § 1392.

Reason for Including This Entry

The National Highway Traffic Safety Administration (NHTSA) thinks this rule is important because the performance requirements associated with the proposal would necessitate redesigning the front ends of all passenger cars. This may have an annual effect of \$100 million (1979 dollars) or more on the economy. The rule also would benefit pedestrians by reducing the number of injuries and deaths resulting from accidents with passenger cars.

Statement of Problem

NHTSA has been interested in pedestrian safety since the Agency was formed. Each year, there are nearly 130,000 accidents involving pedestrians and motor vehicles. NHTSA is concerned about the number and severity of the injuries in these mishaps. Pedestrians suffer an average of four injuries, of varying severity, in each

accident. Federal, State and local agencies have designed numerous programs to reduce this figure, including driver and pedestrian education programs, changes in traffic laws and ordinances, and traffic operational policies (such as better pedestrian signals and pedestrian overpasses or underpasses in locations where numerous accidents occur). In addition, the Agency has issued motor vehicle safety standards to improve the operating systems of vehicles, such as braking and lighting, so that collisions with pedestrians will be avoided. Nevertheless, approximately 8,000 pedestrians die annually in accidents with motor vehicles.

NHTSA decided to initiate this rulemaking when results from the Agency's pedestrian impact protection research program showed that it was possible to design the front ends of vehicles to reduce injury to a pedestrian in an accident.

Follow-up research has indicated that the severity of an injury, especially to a pedestrian's lower body, can be reduced when the front ends of vehicles are designed so that they use more energy-absorbing materials, such as rubber or plastic. Because the proposal would not help prevent accidents involving pedestrians and motorists, we expect to measure the benefits in terms of reducing the severity of injuries and increasing the number of lives saved.

Data from the Agency's accident file show that the frontal structure of passenger cars is the major cause of a large percentage of pedestrian injuries. The only approach likely to change this situation is rulemaking to require automobile manufacturers to make the front ends of vehicles safer. If the Agency takes no action, the current number of pedestrian fatalities and injuries will stay the same or possibly increase.

Alternatives Under Consideration

The Agency is considering establishing performance requirements for the front of passenger cars so that pedestrians would suffer less injury if hit. The Agency is evaluating what areas of the front of the vehicle should be covered, what impact speeds should be used in testing, and what level of performance should be required to prevent injuries.

Summary of Benefits

Sectors Affected: Domestic and foreign manufacturers of passenger cars and parts; suppliers of materials, such as steel, aluminum, rubber and plastics, used in constructing the front

ends of vehicles; body repair shops; and pedestrians.

NHTSA is developing an analysis of the benefits for the proposed rulemaking. We believe that the above-named sectors will benefit from this rule, and will discuss the benefits in the NPRM we are developing. The chief benefit would be to reduce the number and severity of injuries to the lower body of a pedestrian struck by a passenger car. Consequently, there would be fewer deaths and less severe injuries in accidents involving pedestrians and motor vehicles.

Summary of Costs

Sectors Affected: Domestic and foreign manufacturers of passenger cars and parts; and purchasers and users of passenger cars.

NHTSA is developing an analysis of the expected costs of the proposed rulemaking. Generally, the costs to the manufacturers would include initial redesign, material substitution, and additional tooling. We expect design changes to decrease the weight and, therefore, the cost of some vehicles, but to increase the weight and cost of others. The Agency is considering these factors in deriving the expected manufacturer costs. We anticipate that manufacturers will pass along any additional costs to consumers. NHTSA will examine how much it would cost the consumer to operate a vehicle over its lifetime to determine the difference between vehicles that do not meet the standard and vehicles that do. The rule could have an annual effect of \$100 million (1979 dollars) or more on the economy.

Related Regulations and Actions

Internal: The most closely related NHTSA standard is the Part 581 Bumper standard. The proposal's performance requirements may require modification of this standard.

External: None.

Active Government Collaboration

None.

Timetable

NPRM—Early 1981.
Draft Regulatory Analysis—Will accompany NPRM.

Available Documents

None yet.

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DOT—U.S. Coast Guard

Construction and Equipment for Existing Self-Propelled Vessels Carrying Bulk Liquefied Gases (46 CFR 31*, 34*, 38*, 40*, 54*, 98*, and 154*)

Legal Authority

Port and Tanker Safety Act of 1978, 33 U.S.C. 1221, 46 U.S.C. 391a.

Reasons for Including This Entry

This proposal concerns the safe shipping of bulk liquefied gas in existing ships that have been designed for this purpose. The Coast Guard has included this entry because the safety of this cargo and class of vessels has been a general public concern for several years.

Statement of Problem

Existing U.S. ships for carrying liquefied gas, which are called gas ships, were designed and constructed in accordance with current Coast Guard standards. The Coast Guard developed these standards as the need for ships capable of carrying extremely cold liquefied gas grew. However, there has never been an internationally accepted set of design, equipment, and construction standards, and virtually every nation uses its own unique standards. This has created problems because not all countries recognize each other's standards. Therefore, an individual ship must comply with the standards of each country with which it wants to trade. This has the effect of restricting free international trade. To alleviate this situation, in 1976 the international community agreed upon a uniform set of standards for gas ships, developed by the International Maritime Consultative Organization (IMCO). This is known as the Existing Gas Ship Code. The United States can either adopt the Code or not. The Coast Guard needs to evaluate what impact the IMCO Existing Gas Ship Code would have on the U.S. fleet, so we have issued an ANPRM for public comments.

Alternatives Under Consideration

The Coast Guard has considered four alternatives:

- Adoption of the IMCO Existing Ship Gas Code.
- Issue no regulations.
- Require existing gas ships to comply with the new gas ship standards.
- Treat all affected vessels on a case-by-case basis.

The Coast Guard has issued an ANPRM to gather information for future rulemaking. The proposed regulations

will affect 19 U.S. flag vessels and approximately 150 foreign flag vessels. Most U.S. vessels and those foreign vessels currently trading with the United States come close to complying with the IMCO Existing Ship Gas Code. Adoption of the code would establish a uniform level of safety at an acceptable cost, and would allow U.S. flag ships to trade in countries that have adopted the IMCO standard. Consequently, the Coast Guard favors Alternative A. Comments received in response to the ANPRM indicate that there would be minimal difficulty for U.S. vessels to comply with this alternative. Alternatives B, C, and D have serious drawbacks, such as perpetuating inconsistencies, imposing heavy economic burdens on the industry, and restricting free trade.

Summary of Benefits

Sectors Affected: The general public; the marine environment; water transportation of bulk liquefied gas; and construction of liquid cargo vessels.

The Coast Guard expects that any proposed regulation would ensure the safe transportation of bulk liquefied gases aboard existing vessels entering the United States by upgrading the minimum standards for their equipment, material, and construction. However, development of the IMCO standards has been going on for a long time, and most U.S. vessels come close to meeting these standards. In addition, the Coast Guard has been issuing Letters of Compliance to foreign vessels for years. This means that although the IMCO rules would upgrade some safety standards, there would be no radical changes. The major benefit derived from the adoption of these rules would be to have an internationally uniform set of regulations. This would help the industry and the Nation by eliminating confusing conflicts between various standards accepted in different parts of the world. In other words, along with increased safety, an even greater benefit would be promotion of free trade between countries that adopt the IMCO standards.

Summary of Costs

Sectors Affected: Water transportation of bulk liquefied gas; users of this product; and manufacturing of liquid cargo vessels.

Any regulatory action would directly affect owners and operators of gas ships, who probably would pass costs on to the general consumer. The comments received in response to the ANPRM, although incomplete in many respects, indicate that costs would be well below the levels required for a

Regulatory Analysis in the Secretary's guidelines. In any case, the present market for this type of ship is at a minimum. Therefore, in most cases owners and operators would have the flexibility to perform modifications without interrupting their delivery schedules.

Related Regulations and Actions

Internal: On May 3, 1979, the Coast Guard published rules for new self-propelled vessels carrying bulk liquefied gases, which are based on the IMCO Gas Code for new ships. The rules were effective on May 31, 1979.

External: IMCO Existing Gas Ship Code.

Active Government Collaboration

None.

Timetable

NPRM—April 1981. This project has been delayed because other regulatory proposals have had priority over the limited USCG resources available for drafting.

Regulatory Analysis—No Regulatory Analysis will be done.

Available Documents

ANPRM—42 FR 33353, June 30, 1977.

Documents are available from the Agency Contact.

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ENVIRONMENTAL PROTECTION AGENCY

Office of Air, Noise, and Radiation

Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes (40 CFR Part 191)

Legal Authority

-Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2201(b).

Reason for Including This Entry

The Environmental Protection Agency (EPA) thinks this rule is important because it is a critical step towards developing disposal methods for high-level and other long-lived radioactive wastes which could pose serious health problems to current and future generations of people. In addition, we estimate that the annual cost for

implementing these standards could exceed \$100 million (1978 dollars).

Statement of Problem

It is important to ensure proper management and disposal of high-level radioactive wastes because they represent a significant health risk to the population of the United States. Large quantities of these wastes already exist, and national defense programs, commercial nuclear power plants, and research reactors are producing more. At present, the Department of Energy (DOE) stores 70 million gallons of high-level defense wastes in various liquid and solid forms on three Federal reservations in the States of Idaho, South Carolina, and Washington. Owners of commercial nuclear power plants are temporarily storing about 6,000 tons of spent fuel (i.e., fuel removed from a reactor after having generated electrical power) in holding ponds at the various plant sites. Over the next few years, reactors currently licensed to operate are expected to produce an additional 600 tons a year of spent fuel. EPA estimates that these proposed standards will limit cancer deaths resulting from disposal of these wastes to less than 10 per 100 years over the first 10,000 years after disposal. Waste disposal is a future activity and no present basis for risk comparison exists.

Our program to develop these standards began in 1976 as part of an interagency effort to speed up development and demonstration of a high-level waste repository. President Ford announced this program as part of his Nuclear Waste Management Plan on October 27, 1976. President Carter established an Interagency Review Group (IRG) on Waste Management in March 1978 to review existing programs and recommend new policies where necessary. After holding several public hearings on its draft report, the IRG prepared a final report to the President in March 1979. This report recommended that EPA accelerate its programs to set standards for nuclear waste management and disposal activities. President Carter approved this recommendation as part of his Program on Radioactive Waste Management, which he announced on February 12, 1980.

If EPA took no action, this would further delay the Federal waste management program and could have significant environmental consequences. Delay in developing disposal methods results in longer storage of existing wastes in surface facilities requiring human control. Such storage is not necessarily a danger under normal

conditions. The wastes, however, are more vulnerable to accidental release in surface storage than they would be in disposal facilities. The chances for environmental damage are greater the longer the wastes are stored in existing sites. Furthermore, the lack of a solution to this problem has caused serious uncertainty about the future use of nuclear energy in the United States. This uncertainty makes both national and local energy policy more difficult and has many indirect adverse economic and environmental effects.

Alternatives Under Consideration

The disposal system for high-level radioactive waste has yet to be designed and demonstrated by DOE. As a result, we are evaluating two basic types of environmental protection standards, and a third option which combines certain aspects of both.

Alternative (A)—We could develop a standard establishing general principles to govern disposal methods without setting quantitative standards. These principles would specify broad design requirements for disposal systems such as: (1) designing multiple manmade barriers and using natural barriers to prevent release of the wastes, (2) disposing of the wastes so that future generations could recover and relocate them, if necessary, and (3) designing disposal systems to reduce potential releases to the lowest levels reasonably achievable. Such requirements would reduce some of the uncertainties of the disposal systems to be developed which must work for very long times. However, they would not place any clear limit on expected environmental effects.

Alternative (B)—We could set numerical performance requirements for disposal systems without using general principles like those discussed in Alternative (A). These environmental protection standards would then be compared by the Nuclear Regulatory Commission (NRC) against the predicted performance of a proposed disposal system to determine whether the system should be approved. Such an approach would allow complete flexibility in meeting the objectives; however, it would rely upon predictions over very long time periods and such predictions involve many uncertainties.

Alternative (C)—Combine both types of standards discussed above. This will require long-term predictions of disposal system performance to determine if environmental protection objectives are met. The general principles will require conservative design approaches which will protect the environment as much as possible even if these long-term predictions are wrong.

We believe that Alternative (C) provides the most reliable protection of the general population and the environment.

Summary of Benefits

Sectors Affected: The general public. The primary benefit of these standards is the protection of human health. Because the Federal Government has yet to design and demonstrate the disposal system, we are unable to accurately determine the health impact resulting from these standards. We estimate that the number of premature cancer deaths that would be caused by disposal in compliance with our standards would not exceed 1,000 over the first 10,000 years after disposal of the wastes. This is an average of one death every 10 years. Because our estimates are conservative, there is a good chance that actual disposal systems would result in fewer cancer deaths than we estimate.

Many sectors of society, especially environmental groups, State governments, and Members of Congress, have stated that nuclear power should not continue to be used while the problem of high-level radioactive waste disposal remains unsolved. Nuclear power now provides approximately 13 percent of the Nation's power supply. While EPA is neither for nor against nuclear power, we believe that these standards are the first step towards involving the problem of disposing of high-level radioactive wastes, so that the Nation can decide whether or not nuclear power will continue to be part of our energy system.

Summary of Costs

Sectors Affected: Commercial nuclear power plants; consumers of electricity supplied by nuclear power; Federal defense waste management programs; and NRC.

The high-level radioactive waste disposal program will be initially financed by the Federal Government. According to the provisions of President Carter's spent fuel policy, utilities will pay a one-time full cost recovery charge to the Federal Government for the transfer of spent fuel. Military-produced wastes are to be managed and disposed of by the Federal Government.

We calculated the cost impact of these standards by estimating the cost of the additional steps the Federal Government would have to take to be in compliance. Based largely on data and analyses performed by the Department of Energy (DOE), we estimate that in the year 1990 (the year we assume the waste program will be established) these standards will result in an

incremental annual cost of commercial waste management of no more than \$600 million (1978 dollars). This cost impact amounts to less than a one percent increase in national average electricity rates.

We also estimated that the standards would cause an increase of less than \$1.7 billion (1978 dollars) over the total cost of the reference defense waste management program (assuming on-site disposal of high-level waste in geological repositories as the reference program), which is estimated to cost about \$3.7 billion (1978 dollars).

The NRC is responsible for implementing these standards.

Related Regulations and Actions

Internal: We have coordinated the part of these standards that covers normal waste management operations with our Environmental Radiation Protection Standards for Nuclear Power Operations (40 CFR Part 190) to provide consistent exposure standards for all uranium fuel cycle operations.

External: The Nuclear Regulatory Commission (NRC) is responsible for implementing these standards. To accomplish this, NRC is currently developing regulations for Disposal of High-Level Radioactive Wastes in Geologic Repositories (10 CFR Part 60); NRC describes these proposed regulations in this edition of the Calendar.

Active Government Collaboration

We established an interagency working group to help us develop these standards. The agencies represented are the Nuclear Commission, the Department of Energy, and the United States Geological Survey.

Timetable

NPRM—December 1980.
Regulatory Analysis and Environmental Impact Statement—December 1980 (under preparation).
Public Hearings—Several public hearings will be conducted during the public comment period, at times and places that we will announce in the Federal Register.
Public Comment Period—180 days following publication of NPRM.
Final Rule—December 1981.
Final Rule Effective—December 1981.

Available Documents

ANPRM—41 FR 235, December 6, 1976.

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EPA-OANR

Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer (40 CFR Part 61)

Legal Authority

The Clean Air Act, as amended, §§ 111, 112, and 301(a), 42 U.S.C. §§ 7411, 7412, and 7601(a).

Reason for Including This Entry

The Environmental Protection Agency (EPA) thinks that this policy is important because it will set a precedent in establishing how EPA will regulate airborne carcinogens under the Clean Air Act, and include risk assessment and economic analysis in the regulatory process.

Statement of Problem

Cancer is the second leading cause of death in the United States. One American in four is expected to contract some form of cancer in his or her lifetime, and one in five is expected to die from the disease. The most recent statistics show a continued increase in the total incidence of cancer, resulting principally from increases in lung cancer.

Studies of human cancer rates and their worldwide geographical variations, and observations of incidence rates in migrant populations, have revealed that factors in the human environment are probably responsible for a large proportion of cancers. "Environmental factors" in the broad sense include chemical exposures from smoking, diet, occupation, drinking water, and air pollution; various forms of radiation, including sunlight; and some forms of severe physical irritation. Although the uncertainties are great, estimates by the World Health Organization, other prominent institutions, and individual experts suggest that these factors may cause 60 to 90 percent of all human cancers.

Although airborne carcinogens may induce cancer at a number of areas in the body, lung cancer is thought to be the principal form of cancer related to air pollution. While cigarette smoking is probably the most important cause of lung cancer in the United States, many scientists believe that various air pollutants increase the risk of cancer from smoking and other carcinogenic insults. Available estimates also indicate that occupational exposures to

chemicals are responsible for a significant portion of the incidence of lung cancer in the United States.

Through preliminary examination of industries producing chemicals and radioactive materials, and of air sampling results, EPA has identified over 50 known or potential chemical carcinogens and numerous radioactive materials which may be emitted into the atmosphere. Many of these substances are synthetic organic chemicals that have been in commercial use only since the 1930s. Because cancer induced by exposures to small amounts of airborne carcinogens may not appear for 15 to 40 years after exposure, it is still too early to detect the full effects of these chemicals on human health. Thus, it is both prudent and, in view of the large number of people potentially affected, important to reduce or contain emissions of known or suspected atmospheric carcinogens in order to prevent future problems before we actually observe them.

We have, since 1971, listed three airborne carcinogens (asbestos, vinyl chloride, benzene) as hazardous pollutants under § 112, "National Emission Standards for Hazardous Air Pollutants," of the Clean Air Act. As required by § 112, we have developed and are continuing to develop emission standards for significant sources of these pollutants. In addition, we are evaluating a number of other potentially carcinogenic substances to determine whether action under § 112 is appropriate. We have found our actions on airborne carcinogens to be hampered by the lack of a policy, developed with public participation, that would guide our use of § 112 to control airborne carcinogens.

Specifically, we need publicly stated, legally binding policies and regulatory mechanisms to: (1) determine the carcinogenicity and carcinogenic risks of air pollutants for regulatory purposes, (2) establish priorities for evaluating the need for and implementing additional regulatory action, (3) specify the degree of source control required in general under § 112 and indicate how we will determine that level of control in setting individual standards, and (4) provide more extensive public involvement in the Agency's decisionmaking on the regulation of airborne carcinogens.

Alternatives Under Consideration

We describe a number of alternatives in the proposal document (44 FR 58642, October 10, 1979). Beyond that, the principal alternative is to have no formal policy. Under this alternative, EPA would continue with a case-by-case approach for regulating airborne

carcinogens under § 112 of the Clean Air Act. This strategy would allow the Agency maximum regulatory flexibility, but would not give either the general public or the regulated industry sufficient information to enable them to participate fully in the rulemaking process. In addition, the alternative of no policy would not resolve the difficulties which EPA has encountered in the listing of airborne carcinogens and in the subsequent development of emissions regulations. It also does not recognize the need for procedures to ensure that available resources are allocated to the most important or tractable problems on a priority basis.

Under the policy, we will list under § 112 those airborne substances identified as high probability human carcinogens which present a significant carcinogenic risk to public health as a result of air emissions from one or more categories of stationary sources. Where applicable, we will propose generic standards (low-cost, good housekeeping-type standards for the control of fugitive emissions) for control of fugitive emissions from industrial sources. We will submit these standards concurrently with the listing to expedite reductions in emissions which can be achieved through good housekeeping practices in the manufacturing, handling, or use of hazardous materials. We will use risk assessments to determine priorities for further regulation of significant source categories and in the evaluation of residual risk (the risk remaining after the application of best available technology).

At a minimum, the policy requires new and existing sources which present or would present significant cancer risks to apply best available technology (BAT) to control emissions of listed airborne carcinogens. BAT for new sources represents the most advanced level of control adequately demonstrated, considering economic, energy, and environmental effects. For existing sources, the determination of BAT also considers the impacts and technological problems associated with the retrofitting of control equipment. Controls more stringent than BAT may be imposed if the risk remaining after the application of BAT is unreasonable, or, for new sources, if EPA's criteria for risk avoidance associated with plant siting cannot be met.

Our proposed policy contains no reporting requirements.

In most cases, emission standards we establish pursuant to our proposed policy will be in the form of performance standards, rather than specific design standards. Design, operating, or equipment standards will be used only

when performance standards are not practical.

In addition, the new source-siting provisions of the policy allow a new source owner to use an emission offset mechanism to locate a new source of airborne carcinogens in an area where other such sources exist or where the owner has difficulty in meeting emission requirements for the new source.

Summary of Benefits

Sectors Affected: The general public, particularly people living and working in densely populated urban areas and areas with a high concentration of chemical manufacturing industries; EPA; State and local regulatory authorities.

Generic and emission standards that we develop for sources of airborne carcinogens under the proposed policy will reduce cancer risks for large segments of the U.S. population exposed to airborne carcinogens in the ambient air. The greatest benefits will be to individuals who live in the immediate vicinity of characteristic source types.

While low levels of potentially carcinogenic substances have been detected in many parts of the country, the areas of greatest concern are densely populated urban centers and areas with a high concentration of chemical manufacturing industries. In the latter case, the proposal would benefit populations in the Gulf Coast (Louisiana and Texas), the Kanawha Valley (West Virginia), and Northern New Jersey.

The proposed policy will significantly improve EPA's regulatory effort in identifying and controlling airborne carcinogens. Proposing generic standards for certain categories or sources concurrent with listing under § 112 will provide significant reduction in emissions pending development of final § 112 standards.

A mechanism for establishing regulatory priorities will ensure that we address the most important or tractable problems first. The policy also provides for increased public understanding of and participation in EPA's actions and allows EPA to give earlier notice of its findings and regulatory intent to State and local regulatory authorities and to industries.

Summary of Costs

Sectors Affected: Source types emitting carcinogenic substances into the atmosphere, including petroleum refining and establishments which mine or manufacture minerals, inorganic chemicals, radioactive substances and byproducts, and

synthetic organic chemicals; and users of these products.

Our preliminary analyses have identified a number of source types which may emit carcinogenic substances into the atmosphere. Most of these types fall into one of the following six broad groups: (1) mining, smelting, refining, manufacture, and end-use of minerals and other inorganic chemicals; (2) combustion processes, coke ovens, incinerators, power plants, etc.; (3) petroleum refining, distribution, and storage; (4) synthetic organic chemical industries and end-use applications and waste disposal; (5) mining, processing, use, and disposal of radioactive substances and radioactive by products; and (6) sources of noncarcinogenic emissions which are chemically transformed into carcinogens in the atmosphere.

We intend the proposed rule only to guide the Agency in identifying and controlling airborne carcinogens. In its present form, we cannot assess its regulatory effects quantitatively. This policy will, however, provide a basis for impact assessments in subsequent regulatory actions that are taken in accord with its provisions.

Related Regulations and Actions

Internal: Other offices within EPA which are also in the process of developing carcinogen control programs include the Office of Pesticides and Toxic Substances, the Office of Water and Waste Management, and the office of Mobile Source Air Pollution Control. A program is also underway to develop an agencywide cancer policy.

External: Related external efforts include the development of a national cancer policy by the member agencies of the U.S. Regulatory Council; the recent report by the Risk Assessment Work Group of the Interagency Regulatory Liaison Group (IRLG) on the identification of carcinogens and the quantitative assessment of risks; a staff paper by the White House Office of Science and Technology Policy on the identification, characterization, and control of potential human carcinogens; and a report to the President by the Interagency Toxic Substances Strategy Committee.

Other regulatory agencies that are involved in this area include the Occupational Safety and Health Administration, which published a final policy for regulating occupational exposure to carcinogens on January 2, 1980 (45 FR 5002), the Food and Drug Administration, and the Consumer Product Safety Commission. Nongovernmental groups which have

expressed interest in or made recommendations on the control of carcinogens include the Environmental Defense Fund, the American Industrial Health Council, and the Natural Resources Defense Council.

Active Government Collaboration

The Agency has presented testimony at the public hearings held after the Occupational Safety and Health Administration proposed its carcinogen policy. We have also provided information briefings for the Interagency Regulatory Liaison Group and members of the President's Council on Environmental Quality, the Council on Wage and Price Stability, Congressional staff, and interested State air pollution agencies. We have participated in the proposed policy regulating chemical carcinogens issued by the Regulatory Council on October 17, 1979 (44 FR 60038).

Timetable

Final Rule—April 1981.

Regulatory Analysis—None.

Available Documents

"Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer," NPRM, October 10, 1979, 44 FR 58642.

"National Emission Standards for Hazardous Air Pollutants—Generic Standards," ANPRM, October 10, 1979, 44 FR 58662.

"Summary of Responses and Proposals—Testimony and Written Submissions," EPA Public Hearings on Regulation of Carcinogenic Air Pollutants, Washington, DC, March 23, 1978.

Testimony presented at public hearings in Washington, DC, Boston, MA, and Houston, TX the week of March 10, 1980 as well as the written comments received.

Copies of written comments received during the public comment period.

These documents as well as others referenced in the proposed policy are available in public rulemaking docket number OAQPS 79-14. The docket is open for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at: Central Docket Section, Room 2903B, Waterside Mall, 401 M Street, S.W. Washington, DC 20460.

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EPA—OANR

Remedial Action Standards for Inactive Uranium Processing Sites (40 CFR Part 192*)

Legal Authority

Uranium Mill Tailings Radiation Control Act of 1978, § 206, 42 U.S.C. § 2022.

Reason for Including This Entry

The Environmental Protection Agency (EPA) thinks these standards are important because the Federal and State governments cannot undertake the remedial actions Congress authorized until we have promulgated standards for them. People who live or work near tailings areas, primarily in the Rocky Mountain States and Pennsylvania, are very interested in all aspects of the remedial action program.

Statement of Problem

The soils and rocks which make up the earth's crust contain radioactive uranium and thorium isotopes (radionuclides). Almost all human activities that involve removing and processing materials from the earth's crust can result in the release of some of these radioactive materials into the atmosphere. These releases can become potentially hazardous when:

1. The activity involves handling materials that contain concentrations of these radionuclides significantly above the average concentrations in soil;
2. These radionuclides are concentrated during processing to a level significantly above the average concentrations in soil; or
3. The radioactive material is redistributed from its place in nature into a pathway where humans can be exposed to it.

Uranium mining operations involve removing large quantities of ore containing uranium and its radioactive decay products in concentrations up to 1,000 times greater than are normally found in the natural terrestrial environment. After mining, the ores are shipped to uranium mills for separation of the uranium from the other materials in the ore. After the mill crushes and grinds the ore, the uranium is dissolved, precipitated, dried, and packaged as "yellow cake" (U_3O_8). The residues of the process, normally in the form of a wet sand (tailings), are discharged to a disposal area where the liquids are evaporated or partially recycled.

The tailings disposal area consists of a pond and a dry beach area. The size of

each component depends on the amount of water that is recycled, the rate of evaporation, and the amount of raw ore being milled. In areas of high evaporation, large dry beach areas are exposed. Radioactive emissions from these areas result from wind erosion of the tailings and diffusion of radioactive radon gas out of the tailings. In addition, radioisotopes and other toxic substances may seep into ground water. The release of radon gas from piles of uranium mill tailings exposes people in the immediate vicinity of the tailings site to radioactivity and, to a lesser extent, exposes more distant populations. Windblown radioactive particulates from tailings sites and direct gamma radiation constitute secondary sources of radiation exposure. If the tailings are uncontrolled, EPA estimates that approximately 200 premature deaths per century could occur in the national population from radiation-induced lung cancer resulting from emissions from these sources. These effects would be divided approximately equally between people who live within 5 miles of the inactive tailings piles and those in the rest of the country. Health effects from potential contamination of ground water resources are not included in this estimate. The radioactive components in the tailings will remain hazardous for hundreds of thousand of years.

In addition to the hazards posed by tailings piles are those of tailings which have been removed from the piles. In source areas, tailings have been used in construction, often as fill under buildings. Radioactive gas from the tailings may then enter the buildings and raise indoor radioactivity well above normal levels.

Congress recognized that unless it acted, tailings from inactive processing sites might pose a continuing health hazard. Therefore, with the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), Congress authorized a joint Federal and State program to perform remedial actions for inactive uranium processing sites according to standards EPA would set. Under the terms of UMTRCA, the Department of Energy (DOE) has designated 25 eligible inactive processing sites. Tailings piles at these sites contain more than 26 million tons of residual radioactive materials on more than 1,030 acres of land. In addition, DOE is working to designate additional lands and buildings which are affected by tailings from these sites. However, UMTRCA also provides that no remedial actions may be undertaken until EPA has promulgated standards.

Alternatives Under Consideration

EPA's standards for uranium mill tailings will be standards of general application. They are standards which define environmental radiation conditions which must not be exceeded, but they do not specify the means of remedying existing excesses. UMTRCA requires DOE to conduct the remedial action program. We are developing the standards based on currently available knowledge of the potential harmful effects of uranium mill tailings and the technology and costs of avoiding them. With regard to the form and content of the standards, we are considering the following alternatives:

(A) Disposal Standards—EPA is considering an entire range of options from no control to virtually complete control of releases of radioactivity and of non-radioactive toxic substances from tailings. We find that means of providing long-term control of radon releases are available. We are examining the health benefits and costs of controlling these releases to alternative levels which are (a) significantly above the radon release rates characteristic of undisturbed land areas, (b) within the normal range of release from undisturbed lands, or (c) significantly below average rates from such lands.

We currently favor alternative (b) because it avoids nearly all the harmful effects of radon releases and appears to be technically and economically feasible to achieve. Alternative (c) is neither needed nor is it clear that it is reasonably achievable.

We are also considering whether we should prohibit releases of radioactive and non-radioactive toxic substances from tailings to water, or limit releases to levels which preserve water quality for potential uses, including drinking and agriculture. Although information is very limited, we currently believe that a standard prohibiting any releases may be very difficult to implement, and is not clearly needed. We prefer standards for uranium mill tailings disposal that prohibit degrading the existing quality of underground and surface water bodies.

The health protection the disposal system ultimately affords depends on the control levels and the time over which they are maintained. We are examining the technical and economic reasonability of requiring effective control for (a) several hundred years, (b) hundreds to thousands of years, and (c) longer than tens of thousands of years. We currently believe it reasonable to apply the disposal standards for at least 1,000 years. Applying them for very

much longer periods would be impractical for general application.

(B) Cleanup Standards for Contaminated Open Land—We are considering alternative standards for cleanup of contaminated open land as follows:

(a) Standards that would reduce residual radiation levels to local natural background levels.

(b) Standards that would limit the residual radioactivity to levels that may be above local background, but are still within a common natural range of values.

(c) Standards that limit residual radiation to levels significantly above normal background.

Alternative (a) would be unreasonable because the measurements required to distinguish small elevations above background radioactivity would be unproductively expensive. We believe alternative (b) is technically and economically reasonable, and the residual risk will be very small in practice. Therefore, we feel alternative (c) is not warranted.

(C) Cleanup Standards for Buildings—Tailings have sometimes been used as construction materials for buildings. This can cause elevated indoor radioactivity and increased risk of lung cancer for occupants who breathe radioactive particles in the air. In developing remedial action standards for this condition, we are considering earlier recommendations by the U.S. Surgeon General for a similar situation at Grand Junction, Colorado, and guidance provided by EPA to the State of Florida regarding indoor radioactivity. We are also considering alternative standards which take account of this earlier guidance, and which reflect current assessments of the health effects of the indoor radioactivity. The standards will take the form of "action levels," i.e., specifications that, if exceeded, will require remedial action.

We could set action levels in terms of the total indoor radioactivity concentrations, or as an increment above average natural background levels. We prefer to express the indoor radon decay product action level in terms of total radon decay concentration, because background levels cannot be determined separately in practice. Indoor gamma radiation levels are much more easily determined, however, so we prefer to express the gamma radiation standard as a increment above background. In all cases, the standards will apply to radiation that may reasonably be attributed to tailings, not to other causes.

Summary of Benefits

Sectors Affected: People living or working near inactive uranium mill tailings sites designated by DOE for remedial actions under UMTRCA which are located in Arizona, Colorado, Idaho, New Mexico, North Dakota, Oregon, Texas, Pennsylvania, Utah, and Wyoming; individuals who live or work in contaminated buildings; and the general public.

The disposal standards will avoid virtually all detrimental effects of uranium mill tailings for as long as the standards apply. Based on current population distributions, we estimate about 200 lung cancer deaths per century due to radon emissions from tailings piles will be avoided. The number may be larger if populations increase, or if population centers develop near piles that are now remote from people. Furthermore, surface and ground water will be protected from degradation by the tailings. Individuals who live or work in contaminated buildings will benefit from application of the cleanup standards. Finally, applying the cleanup standards for open land will result in conditions that do not require further control. This could make several thousand acres of land available for use, and avoid a potential future administrative burden.

Local economies could benefit from decreased unemployment and increased business activity associated with performing the remedial actions to comply with the standards. The remedial actions would also virtually eliminate the inequitable distribution of risk associated with the tailings, which is now greater for people who live or work near the piles or in contaminated buildings than for the general population. After disposal, the radiation risk for such people will be within the normal range of natural background values.

Summary of Costs

Sectors Affected: Federal Government; affected States; and people living near inactive uranium mill tailings sites designated by DOE for remedial action.

The Federal Government will bear 90 percent of the costs of the remedial action program and the 10 affected States will bear 10 percent. The Federal Government will bear all the costs of remedial actions on Indian lands.

The costs of meeting the disposal standards of all the tailings piles eligible under UMTRCA are difficult to estimate, primarily because methods should be chosen on a site-specific basis. We estimate the average one-time cost of

meeting the standards we currently propose to be about \$1 million to \$6 million (1978 dollars) per site if the existing site is suitable, and \$6 million to \$13 million (1978 dollars) per site otherwise. Total disposal costs for all sites, spread over the 7 years Congress authorized for the remedial action program, would therefore be about \$21 million to \$273 million. More restrictive standards, which would limit radon releases from tailings to well below release rates from normal soils, could require much costlier methods of disposal.

A DOE contractor (Ford Bacon and Davis, Utah Inc.), using interim cleanup criteria, previously estimated that cleanup costs for open lands and buildings would be about \$10 million (1978 dollars). Even allowing for increased costs under the cleanup standards we now prefer, which are very difficult to estimate, tailings disposal is still by far the largest cost component of the remedial action program.

During the performance of the remedial actions, localities will be subjected to increased traffic, dust, and other side-effects of earth-moving and construction operations. Disposal operations may require large quantities of clay and soil for covering the tailings. Contaminated open land will be subjected to scraping and digging by the cleanup operations. The environmental effects of these land disturbances will vary with the site.

Related Regulations and Actions

Internal: Radiation protection guidance for remedial actions on residences on Florida phosphate lands (44 FR 38664).

Draft proposed standard for high-level radioactive waste (in development).

Proposed standards for treatment, storage, and disposal of hazardous wastes under the Resource Conservation and Recovery Act (40 CFR Parts 260-265).

Draft Clean Air Act Standards for radioactive materials (in development).

Proposed Environmental Protection Criteria for Radioactive Wastes, and applicable Federal Radiation Protection Guidance.

Clean Water Act regulations (40 CFR Subchapter D, Part 100 *et seq.*).

National Interim Primary Drinking Water standards (41 FR 133, 40 CFR Part 142).

EPA Air Carcinogen Policy (NPRM—44 FR 58642).

Resource Conservation and Recovery Act (42 U.S.C. §§ 6905, 6912(a), 6921-27, 6930, and 6974).

External: Under UMTRCA, the responsibility for selecting and performing remedial actions that satisfy EPA's standards is given to the Department of Energy. Any States that share the cost must fully participate, and the Nuclear Regulatory Commission must concur. Any affected Indian tribe and the Department of Interior must be consulted when Indian lands are involved. In addition, the Department of Justice has responsibilities related to determining the responsibility, if any, of any private parties for remedial actions.

Active Government Collaboration

The President's Energy Coordinating Committee has formed a subcommittee to oversee Federal implementation of UMTRCA. The subcommittee is chaired by the Administrator of the Environmental Protection Agency. Other participating agencies are the Nuclear Regulatory Commission and the Departments of Energy, Justice, and Interior. These agencies, which all have responsibilities under UMTRCA, have formed a staff level working group which plans necessary interagency coordination and reviews draft documents as appropriate.

Timetable

NPRM—Disposal Standards—November 1980.

Final Rule—Cleanup Standards—September 1981.

Final Rule—Disposal Standards—September 1981.

Final Rules Effective—60 days after promulgation.

Regulatory Analysis—EPA will not develop an analysis, because we expect the cost of implementing the standard in any calendar year will be less than the \$100 million criterion EPA has established for requiring an economic analysis.

Public Hearing—EPA plans to conduct public hearings on the NPRMs, but has not established a date or location for the hearings at this time. We will announce the dates and locations in the Federal Register.

Public Comment Period—The public will have at least a 60-day comment period before the Agency issues the final rules.

Available Documents

From the Congress—House Document Room, H—226 Capitol, Washington, DC 20515. P.L. 95-604, Uranium Mill Tailings Radiation Control Act (UMTRCA); House Report No. 95-2480, Pt. I, Committee on Interior and Insular Affairs; House Report No. 95-1480, Pt. II,

Committee on Interstate and Foreign Commerce.

From DOE—Technical Library, Bendix Field Engineering Corp., P.O. Box 1569, Grand Junction, Colorado, 81502—"Phase II, Title I, Engineering Assessment of Inactive Uranium Mill Tailings Sites" by Ford, Bacon and Davis, Utah Inc. (Microfiche copy only, nominal charge per report).

From EPA/ORP-OANR—"EPA Development of Standards for Uranium Mill Tailings and Uranium Report on Mining Wastes—Call for Information and Data," Federal Register notice, 44 FR 33433, June 11, 1979.

"EPA Indoor Radiation Exposure Due to Radium-226 in Florida Phosphate Lands—Radiation Protection Recommendations and Request for Comment," Federal Register notice, 44 FR 38664-38670, July 2, 1979.

"Interim Cleanup Standards for Inactive Uranium Processing Sites," Federal Register notice, 45 FR 2736b-27368, April 22, 1980.

"Proposed Cleanup Standards for Inactive Uranium Processing Sites," Federal Register notice, 45 FR 27370-27375, April 22, 1980.

EPA documents listed above are available at 401 M Street, S.W., Washington, DC 20460.

Additional documents, when they become available, will be placed in Docket No. A-79-25, which is located in the EPA, Central Docket Section, Room 2902, 401 M Street, S.W., Washington, DC 20460.

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EPA-OANR—Office of Mobile Source Air Pollution Control

Fuels and Fuel Additives (40 CFR Part 79*)

Legal Authority

The Clean Air Act, as amended, § 211, 42 U.S.C. § 7545.

Reason for Including This Entry

The Environmental Protection Agency (EPA) thinks that this rule is important because it may have a marked effect on the way private industry develops and markets fuels and fuel additives, and because of its potentially beneficial public health effects. While this rule

may not have an annual impact of \$100 million or more, the potential growth in the use of synthetic fuels and fuel additives in the future, as the Nation attempts to lessen its dependence on foreign oil, makes it a rulemaking worthy of attention.

Statement of Problem

In 1977, Congress amended the Clean Air Act, adding § 211(e), which requires EPA to develop regulations to test the environmental and health effects of fuels and fuel additives. Section 211(e)(2) of the Act itself establishes deadlines by which the manufacturer must provide the requisite information to the EPA Administrator. Section 211(e)(3) authorizes the Administrator to: (1) exempt small businesses from the regulations, (2) provide for sharing of testing costs among manufacturers who desire to register identical compounds, and (3) exempt businesses from duplicative testing requirements.

The present registration regulation requires that manufacturers submit certain information on the chemical composition and the toxicity of fuels and fuel additives to the extent this information is known by the manufacturer as the result of testing conducted for reasons other than fuel registration (40 CFR 79.31(c)).

The proposed action may require the manufacturer to perform certain physical, chemical, and biological testing fuels and fuel additives before registration.

On August 29, 1978 EPA published an ANPRM in the Federal Register (43 FR 38607) requesting comments on the types of health effects and emissions test methods to be used, small business criteria, and cost sharing provisions. In response to this request, the Agency received over 22 submittals of comments from the interested public. These regulations will consider all comments received from the interested individuals and organizations.

Alternatives Under Consideration

Our preferred alternative is to require health effects and emissions testing by manufacturers on a tier basis. This approach would require manufacturers to report the chemical composition of all candidate fuels and fuel additives. If, based on chemical composition, EPA can make a determination that the environmental and health impacts are insignificant, further testing may not be required. However, if the initial and subsequent data present a cause for concern, further testing will be required until the concern is alleviated.

The second alternative would require full testing by manufacturers for all fuels

and fuels additives with no exemptions. Approximately 2,000 fuels and fuel additives could require full environmental and health testing by their current manufacturers. This alternative would be unnecessarily costly, as many fuels and fuel additives whose environmental impact we can predict to be small or negligible will have to be tested.

The third alternative would be to require manufacturers to submit test data demonstrating the effect of their fuel or fuel additive on regulated pollutants only (oxides of nitrogen, carbon dioxide, hydrocarbons) before registration, but not to require health or environmental testing. This is the present system as required by 40 CFR Part 79, but which the Congress required be improved via these regulations.

Summary of Benefits

Sectors Affected: The general public, particularly those living in urban areas where the concentration of vehicles is greatest; and those people who live near or work in plants which produce fuels or fuel additives.

The benefit we expect from this regulation is the protection of public health. Those fuels and fuel additives and the products of their combustion, which may be harmful to public health, will be identified and eliminated from the marketplace, where appropriate.

We cannot estimate the economic benefits, in terms of reduction in respiratory and other diseases, at this time. However, because of the current cost of medical services and because of the generally accepted view that prevention is preferable to treatment of diseases, the expected economic and social benefits, although they are not quantifiable at this time, should be significant.

Summary of Costs

Sectors Affected: Petroleum refining; and users of motor vehicles or their services.

There are over 2,000 fuels and fuel additives currently registered under § 211 of the Clean Air Act. We roughly estimate that approximately 200 of these will require some degree of testing by the manufacturers. The cost to the industry of implementing these tests could total as high as \$90 million to \$120 million (1979 dollars). These costs will be incurred over the first 3 years of regulation, because by law, all fuels and fuel additives must meet the testing requirements within 3 years of the date of promulgation of this regulation. Small businesses would be exempt from the most costly tests. Users of motor vehicles will share these costs to the

extent they are passed on by the petroleum refiners.

Related Regulations and Actions

Internal: Fuels and Fuel Additives Registration, 40 CFR Part 79.

Proposed Guidelines for Registration of Pesticides, 40 CFR Parts 161, 162, and 163.

Toxic Substances Control Act, § 4, Carcinogen Protocols and Chronic Toxicity Protocols, 40 CFR Part 772.

Ambient Air Quality Standards, 40 CFR Part 50.

External: None.

Active Government Collaboration

Health-testing protocols will be submitted to the Interagency Regulatory Liaison Group (IRLG) for screening before the regulation is promulgated.

Timetable

ANPRM—February 1981.

NPRM—November 1981.

Regulatory Analysis—November 1981.

Public Hearing—60 days after publication of NPRM.

Public Comment Period—90 days

following publication of NPRM.

Comments may be sent to Charles L. Gray, Jr., Director, Emission Control Technology Division, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105.

Final Rule—November 1982.

Final Rule Effective—Three years after promulgation of regulation.

Available Documents

Testing for Health Effects on Fuels and Fuel Additives, Gause, et al., Environmental Monitoring Systems Laboratory, Research Triangle Park, NC 27711.

Test Plan to Study the Effect of MMT on Emissions Control Performance (unpublished draft); Protocol to Characterize Gaseous Emissions as a Function of Fuel and Additive Composition, EPA-600/2-750048, September 1975.

ANPRM—43 FR 38607, August 29, 1978, EPA Docket ORD-78-1.

All documents available for review at the EPA, Central Docket Section, Waterside Mall, Room 2903B, 401 M Street, S.W., Washington, DC 20460. The documents are available for personal inspection Monday through Friday between 8:00 a.m. and 5:00 p.m., or copies can be obtained by personal or written request. A reasonable fee may be charged for copying.

Agency Contact

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EPA—Office of Pesticides and Toxic Substances

Chemical Hazard Warning Labels (40 CFR Parts 760 and 781)

Legal Authority

Toxic Substances Control Act, 15 U.S.C. §§ 2605 (a)(3) and (c)(1); 15 U.S.C. §§ 2607(a)(1) (A) and (B), 15 U.S.C. § 2625(c).

Reason for Including This Entry

These regulations may have a significant impact on at least some segments of the chemical industry and may cause the industry initial costs of \$100 million or more.

Statement of Problem

Workers are exposed in their jobs to a large number of chemical substances and mixtures, many of which present health or safety hazards. U.S. companies produce or import approximately 55,000 substances for commercial purposes. This number only accounts for *substances*; far more of the chemical products manufactured or imported for commercial purposes are *mixtures* composed of combinations of these substances. Existing data indicate that as many as 25 percent of these substances present health and/or safety hazards. Exactly how many of the estimated 300,000 chemical products—counting both substances and mixtures—are hazardous is not known.

Manufacturing industries employ approximately 20.5 million people; the chemical industry alone employs approximately 1.1 million, including professionals (such as chemists and chemical engineers) and a variety of production, maintenance and repair, and janitorial workers.

During production there are many opportunities for workers to be exposed to hazardous chemicals. Exposure may occur as workers maintain and repair industrial systems; as they handle raw materials, intermediates, and finished products; or as a result of breakdowns, leaks, and spills. Workers also may be exposed continuously to fumes and vapors from hazardous chemicals.

In 1977 the National Institute for Occupational Safety and Health published the National Occupational Hazard Survey. The results indicated that approximately 7.5 million workers were exposed to trade-name products

containing at least one of approximately 400 substances that the Occupational Safety and Health Administration (OSHA) then regulated. Workers who were exposed experienced, on the average, exposures to seven hazards simultaneously (the survey recorded exposures to different substances or exposure to the same substance through different routes (e.g. inhalation and skin contact) as distinct exposures).

The Bureau of Labor Statistics (BLS) reported approximately 188,000 new cases of occupational illness in 1976, and 162,000 in 1977. But under-reporting of occupational illness is a major problem, in part because the chemical causes of many acute and chronic occupational illnesses remain unrecognized. These BLS data indicate that 91,900, or 54.7 percent, of occupational illnesses in 1976 and 93,800, or 57.9 percent, of occupational illnesses in 1977, other than malignant or benign tumors, were caused directly by exposure to chemicals.

To deal with this problem, EPA is planning to promulgate a rule that will require manufacturers and importers of chemical substances and mixtures which present acute health or safety hazards to label containers of these chemicals with warning statements and precautions for use. The Agency will simultaneously promulgate a rule that will require similar labeling for containers of carcinogenic substances and mixtures.

Some chemical manufacturers and importers already place hazard warning labels on containers of their products. EPA has reviewed a sample of labels that industry currently uses voluntarily and has found that many provide clear and comprehensive hazard information. In some cases, indeed, labels provide extensive information. However, many companies use labels that are internally inconsistent, inaccurate, or provide less information than EPA believes is necessary. These rules will make mandatory an activity that is now voluntary, and, in doing so, will ensure that all workers who are exposed to chemical hazards have access to information about these hazards and about the precautions they can take against them.

Alternatives Under Consideration

The Agency has decided to require container labeling because it provides an immediate source of hazard information at the site of exposure to chemicals in the workplace, at a relatively low cost. This approach has the same focus as current industry practice, and workers are familiar with systems of labeling on which the

proposed rules are based. Alternatives that did not involve labeling (such as requiring training programs) have been rejected because they would not provide hazard information relating to specific chemicals at the time and place of potential worker exposure.

The principal alternatives to this rule that the Agency is considering are (A) taking no regulatory action and (B) limiting the scope of the labeling rules in some way.

Alternative A, taking no regulatory action at this time, theoretically could produce the same benefits as the proposed rule, assuming that the industry continued with existing voluntary labeling programs and that these programs were successful. However, to the extent that the benefits of voluntary labeling were equal to the benefits of the proposed rule, the costs would also be equal. EPA has rejected this alternative, because it believes that current voluntary labeling is insufficient, particularly when it comes to warning for cancer hazards. There is no appropriate body to police the industry's labeling practices, and there are insufficient incentives for industry to improve labeling practices in the absence of regulatory action.

Alternatives for the rules' scope of applicability are to have them apply to (a) all hazardous chemicals distributed in commerce, (b) chemical substances but not mixtures, (c) large volume chemicals only.

Alternative (a), applying the rules to all hazardous chemicals distributed in commerce, is the Agency's choice. Alternative (b) has the advantage that it could reduce the costs that manufacturers and importers would incur in determining whether their products were hazardous. It would eliminate the difficulties of determining the hazards of mixtures, and it would apply to a much smaller set of chemicals. Current voluntary industry standards already cover far more chemical products than would be covered by rules with such a narrowed scope; this approach would represent a backward step in hazard warning labeling. To restrict the scope in this way would significantly reduce the benefits of the rules. It would also cause confusion among workers, because a hazardous substance would be labeled, while a mixture with the same hazards would not. This kind of inconsistency would lead workers to wonder whether any hazard warning label was meaningful. For these reasons, the Agency believes that to narrow the scope of the rules in this way would result in virtually meaningless rules.

Alternative (c) is to have the rules apply only to large volume chemicals. This alternative theoretically could reduce the costs of the rules. But there presently is no recognized definition of a "large volume" chemical. Because different companies often produce the same substances or mixtures under different trade names, EPA would need to require extensive confidential formulation information, recordkeeping, and reporting in order to identify "large volume" products. The cost of developing an accurate and specific list of "large volume" chemicals would be so high that this alternative would be unlikely to produce significant cost savings.

The same alternatives apply to the rule on cancer hazard warning. In addition, there is an alternative to the approach the Agency has taken to cancer hazard warning in the proposed rule. EPA intends to promulgate along with the rule a list of substances that the Administrator has designated as carcinogens. Manufacturers would have to label as carcinogens these substances and any mixtures containing them.

Alternatively, EPA could publish a set of criteria by which manufacturers and importers would determine whether their products were carcinogenic. There are, however, no criteria that would make it easy for a manufacturer or importer routinely to evaluate products for carcinogenicity. In the interests of reducing controversy and preventing duplications of effort that could result in large expenditures of resources, EPA has chosen to promulgate a list of designated carcinogens instead of a set of criteria.

The proposed rules as they are presently written provide substantial flexibility, so that companies which are essentially in compliance now need not redesign their labels. Compliance will be on a phased schedule, so that the industry may take advantage of information it develops for substances in developing information for mixtures. Since mixtures are composed of combinations of substances, the rules will require manufacturers and importers of substances to comply earlier than manufacturers and importers of mixtures. The rules will require no recordkeeping or reporting.

These rules require the disclosure of information, and in this respect employ an innovative regulatory technique. When information about the hazards of chemicals in the workplace is widely available to workers and to occupational health specialists, they may modify their behavior accordingly and thus eliminate the necessity, in

some cases, for more restrictive forms of regulatory action.

Summary of Benefits

Sectors Affected: Workers and establishments in all industries which produce, use, or otherwise place workers in contact with hazardous chemicals, particularly manufacturing industries.

The primary benefit of these labeling regulations will be to provide information to industrial workers, through labels supplied by the manufacturers and importers of hazardous chemicals, about the hazards to which their work exposes them. The Agency expects that workers will use this information to protect themselves from injury and illness that may result from exposure to hazardous chemicals. The knowledge so gained should result in reduced exposure to chemical hazards and reduced occurrences of occupational injury and illness that result from such exposure. A Regulatory Analysis is in progress. Even when it is complete, however, the benefits of these rules will not be altogether quantifiable.

The indirect benefits of the labeling regulations may be great. Once workers have adequate hazard information, they can work with management to control or eliminate most hazardous exposures. Companies that use chemicals may stop using the most hazardous, thereby creating incentives for the development of safer substitutes and/or better exposure controls for specific uses.

Summary of Costs

Sectors Affected: The chemical industry, particularly small firms.

Chemical companies will incur initial costs for developing information and designing labels. Ongoing costs will include the costs of producing the necessary number of labels for a given year's production and of developing new labels when new information reveals that a product has a hazard that was previously unrecognized. The Agency's preliminary estimate is that initial costs will range from \$50 million to \$150 million and ongoing costs from \$6 million to \$16 million. To some extent, the impact will be greater on small companies than large ones, primarily because small firms' expertise in locating and evaluating hazard information is limited. To assist such firms, the Agency will provide guidance on information sources. A Regulatory Analysis is being prepared.

Related Regulations and Actions

Internal: None.

External: The Occupational Safety and Health Administration (OSHA) of

the Department of Labor will be proposing a rule requiring that labels on containers of hazardous chemicals in the workplace disclose the chemical identity of the contents.

Active Government Collaboration

EPA and the Occupational Safety and Health Administration have been coordinating the development of their respective labeling rules and plan to propose them in the Federal Register simultaneously.

Timetable

NPRM—December 1980.
Regulatory Analysis—Will accompany NPRM.
Public Hearings—Schedule not yet set.
Public Comment Period—Following NPRM.
Final Rule—Fall 1981.
Final Rule Effective—Not yet determined.

Available Documents

None Yet.

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EPA—OPTS

Chloromethane and Chlorinated Benzene Proposed Test Rule; Amendment to Proposed Health Effects Standards (40 CFR Part 773)

Legal Authority

Toxic Substances Control Act, §§ 4 and 26, 15 U.S.C. §§ 2603 and 2625.

Reason for Including This Entry

The Environmental Protection Agency (EPA) thinks this rule is important because we need data to assess the risk of injury to human health caused by exposure to the chemicals chloromethane and chlorinated benzenes. This rule is also significant because it is the first rule the Agency has proposed under § 4 of the Toxic Substances Control Act (TSCA) which will require manufacturers and processors of chemical substances to perform testing to assess the health effects of toxic substances.

Statement of Problem

Section 4 of TSCA gives the Environmental Protection Agency the authority to require that manufacturers and/or processors of chemicals test

these chemicals for possible adverse effects on human health or the environment. To implement § 4, we are in the process of developing, proposing, and promulgating test standards and test rules. A test standard is a description of the scientific methodology and analysis to be used in testing for an effect. A test rule is a regulation requiring manufacturers and processors of specific chemicals to test these substances for certain effects according to appropriate test standards. The Agency established a reasonable timetable in which industry must complete the development of the test data.

Section 4(e) of TSCA established an Interagency Testing Committee (ITC) to make recommendations to the EPA Administrator, in the form of a list, regarding chemical substances that should receive priority consideration in the Agency's development of test rules. For the most part, chemicals to be included in test rules come from the semiannual recommendations made by the ITC. The Committee's eight members represent the Council on Environmental Quality, the Department of Commerce, the Environmental Protection Agency, the National Science Foundation, the National Institute of Environmental Health Sciences, the National Institute for Occupational Safety and Health, the National Cancer Institute, and the Occupational Safety and Health Administration (OSHA).

The ITC in its Initial Report (42 FR 55026, October 12, 1977), recommended that chloromethane be tested for carcinogenicity, mutagenicity, teratogenicity, and other chronic effects and emphasized its concern about chloromethane's effects on the central nervous system, liver, kidney, bone marrow, and the cardiovascular system.

We have completed our analysis of data on the health effects of and levels of exposure to chloromethane. Approximately 300 to 500 million pounds of chloromethane are manufactured annually in the United States.

Almost all chloromethane is used as a chemical intermediate in the manufacture of materials such as silicones and tetramethyl lead. Because of chloromethane's almost exclusive use in chemical and allied product manufacture and processing, the greatest potential for human exposure during its life cycle occurs for workers engaged in the manufacture, processing, and use of the chemical.

Our analysis of studies showing gene mutations in bacteria, chromosomal changes in plant cells, neurotoxicity, birth defects, embryo and fetal toxicity in test animals, and other data indicate

that exposure to chloromethane may cause cancer and structural birth defects in humans. Hence, we believe that the level of human exposure to chloromethane during manufacturing, processing, and use may pose an unreasonable risk to human health. Because of these findings and the estimated levels of human exposure, we are proposing requirements for industry to test for the health effects of chloromethane in our first test rule.

Monochlorobenzene and dichlorobenzene were also contained in the ITC's initial report. The ITC recommended the development of rules that would require industry to test these chlorinated benzenes for potential to cause cancer, gene mutation and chromosomal aberration, structural birth defects, other chronic effects, and environmental effects and also recommended requiring an epidemiological study. The ITC's third report (43 FR 50830, October 30, 1978) added the higher chlorinated benzenes, (tri-, tetra-, and penta-) to the priority list and recommended testing requirements for the same effects.

Our investigation of the chlorinated benzenes indicates that the annual domestic production volume ranged from over one million pounds of pentachlorobenzene to 325 million pounds of monochlorobenzene. Exposure to the liquid chlorobenzenes is due to their use as a functional fluid in transformers, process solvents, solvents in formulated products, and synthetic intermediates, while exposure to the solid forms results from their use as synthetic intermediates and pesticides. Workers are exposed to chlorinated benzenes during manufacture, processing, and use; consumers are exposed to certain chlorobenzenes in the use of formulated products such as toilet bowl cleaners, drain cleaners, space deodorants, and moth control agents; and the general population may be exposed from environmental concentrations resulting from manufacture, processing, use, and disposal of the substances.

Our analysis shows that exposure to the chlorinated benzenes may present an unreasonable risk of cancer, structural birth defects, and reproductive and subchronic/chronic effects (effects from longer term exposure periods of 90 days to 2 years). These conclusions are based on (1) their chemical structural similarity to known carcinogens and teratogens; (2) the tumor-promoting activities of chlorinated benzene metabolites (chemicals to which chlorinated benzenes may be converted by

processes in the human body); (3) studies showing, among other things, mutagenic effects, birth defects, embryo- and fetotoxic (toxic to the fetus) responses, and reproductive effects in animals; and (4) reports of adverse effects on human livers and blood production. Because of these findings and the potential for human exposure, we are proposing health effects testing requirements for the chlorobenzenes in the first test rule.

EPA is also assessing other ITC chemicals as candidates for future § 4 test rules. Nitrobenzene, 1,1,1-trichloroethane, and dichloromethane are actively being assessed at the present time. EPA anticipates proposing two test rules in 1981.

Alternatives Under Consideration

The alternatives available to us are quite limited. Under TSCA, if EPA finds that (1) a chemical may present an unreasonable risk of injury to human health or the environment or a chemical may enter the environment in substantial quantities or result in significant human exposure, and (2) there are insufficient data or experience to characterize its effects on health or the environment, and (3) testing is necessary to develop such data, we must require industry to conduct testing and there is no alternative to issuing a test rule. However, we will encourage industry to begin testing of a chemical before a test rule is proposed. If such testing is satisfactory, it could obviate the need for a test rule.

Another alternative is to conduct testing in governmental facilities or under contract to the Government. We will take this approach where it would be inappropriate or infeasible to require testing by the chemical industry, but heavy reliance on this approach would be in direct conflict with TSCA, which states that the development of data on health and environmental effects "should be the responsibility of those who manufacture and those who process chemical substances and mixtures."

EPA considered a proposal to require alternative health effects tests to those chemicals selected, but rejected these alternatives for a number of reasons. Some alternative types of testing which were not selected were excluded because under the § 4(a)(1)(A)(i) finding, EPA must be able to show that the chemical may have the propensity to cause an effect before testing that effect can be required. Other testing was rejected because the choice of tests must reflect the § 4(a)(1)(A)(ii) finding that existing data are insufficient to determine the effects of the chemical.

For example, in the instance of two of the chlorinated benzenes, because oncogenicity (cancer) testing is already under way through the National Cancer Institute, EPA is not proposing additional oncogenicity testing for these two chemicals at this time. A third reason for not selecting an alternative type of testing is that elements of the test methodology were not available, or their development would have caused a delay in the proposal of the rule.

EPA selected the chlorinated benzenes and chloromethane for this test rule rather than alternative chemicals on the ITC Priority List. The selection of chemicals for this test rule was based on the following strategy. Because the ITC has designated all chemicals on the Priority List as having equal priority, EPA has, in general, attempted to evaluate the ITC chemicals in the order that they were presented to the Agency. This order is also influenced by the availability of information and difficulty of assessment. In addition, as is the case with the two chlorinated benzenes groups, the Agency may evaluate together several recommendations proposed by the ITC at different times.

EPA also considered an alternative approach to the reporting deadlines. This approach would have established dates only for the beginning of the testing period rather than dates for reporting during and at the end of the testing period. This alternative was rejected because § 4(b)(1)(C) of TSCA requires EPA to specify the time period within which persons subject to a test rule must submit test data. In addition, EPA believes that it is not necessary to consider size or production capacity of the manufacturers or processors subject to the rule when establishing reporting deadlines because this is not specifically required in the Act, because it is difficult to predict exactly who will bear the testing responsibility, and because EPA expects manufacturers and processors to coordinate their testing efforts.

Summary of Benefits

Sectors Affected: Workers in establishments manufacturing chloromethane, chlorinated benzenes, and products produced with these chemicals, and workers otherwise exposed to these chemicals; consumers of formulated products containing chlorinated benzenes, such as toilet bowl cleaners, drain cleaners, space deodorants, and moth control agents; the general public; EPA; OSHA; and State and local governments.

The data generated from the testing required by this rule would permit EPA

to assess the risk to human health of manufacturing, processing, and use of chloromethane and the manufacturing, processing, use, and disposal of the chlorinated benzenes. If the Agency finds this risk to be unreasonable, it may take action to reduce human exposure under one of its authorities or recommend regulation by another agency, such as OSHA.

The testing required by this rule could potentially benefit individuals who may be exposed to these chemicals. This would include potentially 50,000 workers who may be exposed to chloromethane and potentially 3 to 4 million workers who may be exposed to the chlorinated benzenes. In addition, consumers exposed to products containing the chlorinated benzenes and the general population exposed to any of these chemicals via dissemination throughout the environment may also derive benefits from the test rule on these chemicals. The benefits from future regulations which are based on data obtained through the test rule would include reduced illnesses among workers, consumers, or the general population; this would potentially result in reductions of absenteeism at work, higher productivity levels, and savings of health costs.

The data generated by this test rule will also result in benefits to Federal agencies such as EPA and OSHA and State and local governments. These data will serve to alert government agencies to potential risk from these chemicals and will also obviate the need for these agencies to expend resources to search for data on these chemicals when assessing their risks.

Summary of Costs

Sectors Affected: Manufacturing of chlorinated benzenes, including some manufacturers and processors of industrial solvents, dyes, organic intermediates, pesticides, and solvent-carrying chemicals; and manufacturing of chloromethane, including manufacturers and processors of some silicone products, chlorinated hydrocarbons, butyl rubber products, herbicides, and lubricating greases and oils; and consumers of products produced with these chemicals.

EPA estimates the annualized costs of complying with these rules to be \$144,000 to \$267,000 (1979 dollars) for manufacturers and processors of chloromethane and \$371,000 to \$1,016,000 for manufacturers and processors of the chlorinated benzenes. These costs might conceivably be passed on to processors of these chemicals who have not contributed

money towards the cost of testing through reimbursement procedures (i.e., manufacturers using these chemicals in their manufacturing processes), or to consumers of products produced with these chemicals.

Related Regulations and Actions

Internal: We proposed health effects test standards for various effects on May 9, 1979 (44 FR 27334) and July 26, 1979 (44 FR 44054) and standards for Good Laboratory Practices for Health Effects on May 9, 1979 (44 FR 27362).

EPA will publish final health effects standards in early 1981. EPA also plans to propose standards for various ecological toxicology tests in early 1981 and standards for environmental fate (tests which determine the transport and persistence of a chemical in the environment) in late 1980.

We also published a proposed rule under TSCA § 8(d) that would require persons to submit all unpublished health and safety studies concerning all chemicals recommended for testing by the Interagency Testing Committee (44 FR 77470, December 31, 1979).

Simultaneously with our publication of this first rule, we (1) published a Proposed Statement of Exemption Policy and Procedure relating to the granting of exemptions from § 4 testing, and (2) announced our tentative decision not to require health effects testing for acrylamide, a compound suspected of entering surface water and ground water through its use as a chemical grout, a wastewater treatment chemical, and other industrial applications. The conclusion is based on animal studies that demonstrate the consistent induction of nervous system disorders at very low exposure levels, and we believe that any further information gained through testing would not affect regulatory actions designed to reduce human exposure to acrylamide. Acrylamide was included in the ITC's second list of chemicals (43 FR 16684, April 19, 1978) to be considered by EPA for test rule development.

External: Under the aegis of the Interagency Regulatory Liaison Group, the EPA, the Food and Drug Administration, the Occupational Safety and Health Administration, and the Consumer Product Safety Commission are jointly developing guidelines describing test methods that will meet all four agencies' needs.

Active Government Collaboration

Other Federal agencies that have been or will be consulted include the Food and Drug Administration, Consumer Product Safety Commission, Occupational Safety and Health

Administration, National Cancer Institute, and National Institute of Environmental Health Sciences.

Timetable

Final Rule—October 1981.
Regulatory Analysis—None.

Available Documents

Chloromethane and Chlorinated Benzenes Proposed Test Rule, Proposed Health Effects Standards Amended, 45 FR 48524, July 18, 1980.

Acrylamide: Response to the Interagency Testing Committee, 45 FR 48510, July 18, 1980.

Exemptions from Test Rules: Proposed Statement of Policy and Procedures, 45 FR 48512, July 18, 1980.

Proposed Health Effects Test Standards for Toxic Substances Control Act Test Rules: Proposed Good Laboratory Practice Standards for Health Effects, 44 FR 44054, July 26, 1979.

Proposed Health Effects Test Standards for Toxic Substances Control Act Test Rules, 44 FR 27334, May 9, 1979.

The Interagency Testing Committee established under TSCA has issued six reports making recommendations on chemicals to be covered by TSCA testing rules:

First Report 42 FR 55026, October 12, 1977.

Second Report 43 FR 16884, April 19, 1978. OTS Docket 040004.

Third Report 43 FR 50630, October 30, 1978. OTS Docket 04005.

Fourth Report 44 FR 31886, June 1, 1979. OTS Docket 41001.

Fifth Report 44 FR 70664, December 7, 1979. OTS Docket 41001.

Sixth Report 45 FR 35897, May 28, 1980. OTS Docket 41002A.

Public Comments received during the comment period, which ended October 31, 1980, are available for inspection in the OPTS Reading Room (Room 407 East Tower, 401 M Street, S.W., Washington, DC 20460) between the hours of 8:00 a.m. and 4:00 p.m. on working days (Docket number 80T-127).

Transcripts of public meetings held on October 15, October 21, October 24, October 30, and October 31, 1980, are also available for inspection in the OPTS Reading Room.

The following Proposed Support Documents are also available in the OPTS Reading Room: 1) Chloromethane Support Document, 2) Chlorinated Benzenes Support Document, 3) Exposure Support Document, and 4) Economic Analysis Support Document.

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EPA—OPTS

Pesticide Registration Guidelines (40 CFR Part 163, Subparts A-P)

Legal Authority

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136a(c)(2)(A), 136f, and 136w.

Reason for Including This Entry

The Environmental Protection Agency (EPA) estimates that the cost to chemical companies and other registrants whose products are registered with EPA or who apply for registration of their products to meet the Guidelines' requirements will be approximately \$1.4 billion over the next 10 years.

Statement of Problem

With certain limited exceptions, EPA must, in accordance with FIFRA, register all pesticides before legal sale and distribution by manufacturers and formulators can occur in the United States. The purpose for requiring registration of a pesticide is to permit EPA to determine if: (A) the composition of the pesticide is such as to warrant the proposed claims for it; (B) the labeling and other material required to be submitted comply with the requirements of the Act; (C) the pesticide will perform its intended function without unreasonable adverse effects on the environment; and (D) when used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment.

Before the development of the Guidelines, registration actions and review were undertaken on a case-by-case basis. Such a procedure obviously led to much confusion, many inefficiencies, and a great deal of inconsistency. With some 35,000 currently-registered pesticide products (several thousand registered each year), the need for an improved procedure was obvious to Congress when it required the Agency to develop Guidelines, at FIFRA § 3(c)(2)(A). Without these Guidelines, the following problems would inevitably result: registration applications would often be incomplete or inadequate; applications would spend unnecessary time and money because requirements were not delineated or clarified; and EPA would not be able to perform registration reviews efficiently. These are the problems that existed before the

proposed Guidelines were first published.

The Guidelines specify the kinds of information required to support a registration application. Such information encompasses data required for health and safety evaluation for humans, domestic animals, wildlife, aquatic organisms, and nontarget plants and insects. It also includes chemistry data concerning characteristics of pesticidal ingredients and the pesticide product, and dealing with residues and environmental fate of pesticides. In addition, information on registration procedures, labeling, product efficacy, exposure analysis, and product disposal are required. The Guidelines also specify the kinds of information of each type mentioned above that would be required for pesticides to be tested under an experimental use permit, and for pesticides categorized as biorational pesticides (pheromones, bacteria, viruses, etc.).

Prospective registrants (primarily pesticide manufacturers and formulators) are responsible for both testing and submittal of test results to the Agency to support their registration applications. In addition, FIFRA requires that currently registered pesticides be re-registered expeditiously. In many cases, the registrants of these pesticides will now have to submit health and safety data that meet FIFRA requirements, either because they had not previously submitted the data or because they had submitted inadequate data.

Alternatives Under Consideration

Section 3(c)(2)(A) of FIFRA requires that "The Administrator shall publish guidelines specifying the kinds of information required to support the registration of a pesticide and shall revise such guidelines from time to time." Therefore, we are not considering alternatives to publication of the Guidelines. The Agency is analyzing public comments on the portions already proposed (see "Available Documents") and is considering these comments to improve the nature and clarity of the proposed data and testing requirements.

Summary of Benefits

Sectors Affected: Pesticide and agricultural chemical manufacturing and formulating; chemical/biological testing laboratories; EPA; users of and those exposed to pesticides, especially farmers and farm laborers; and the general public.

The Guidelines will give prospective registrants the benefit of knowing precisely what kinds of data the Agency requires (though there are some

provisions for waiving some requirements under some circumstances). Manufacturers and formulators therefore will be able to plan their research and development programs with greater certainty and thereby save money and time. (For example, if a product of moderately-wide potential use can be marketed 2 years sooner—which is likely, if the applicant can use the Guidelines properly—\$4 million profit for those 2 years can be had.) The chemical/biological testing industry (comprising 90 to 100 businesses at present, but still expanding) will also benefit from increased business due to some additional requirements now in the Guidelines and due to the standardized requirements that improve planning and efficiency. The Guidelines will benefit the Agency by improving the quality of data available for making decisions, and by allowing for more efficient processing of applications. Farmers and the public will benefit generally from having safer pesticides available.

Summary of Costs

Sectors affected: Pesticide and agricultural chemical manufacturing and formulating; and users of pesticides, particularly farmers.

To meet the Guidelines' requirements over the next 10 years, EPA estimates that the cost (in 1980 dollars) to registrants will be approximately \$470 million for the data call-in program, \$382 million for the remaining data needed to meet for registration standards, \$840 million for the data needed to support new registrations, and about \$210 million for the data to be required by those subparts of the Guidelines yet to be proposed. Approximately half of the costs would be applied to re-registration, and the rest to new registration; however, the costs for re-registration would be principally in the "data call-in" and "remaining data" categories.

The annual cost would be higher (starting at \$200 million) during the first 5 years and then decline (to about \$100 million) during the latter 5 years. Current (1980) pesticide industry research and development expenditures are \$365 million; of this total, approximately \$100 million are used to meet registration requirements. The additional costs imposed by these Guidelines would thus add 30 to 55 percent to the total research and development expenditures. In relation to sales, these costs amount to 4 to 6 percent of the income at the basic producers level (\$3 billion), or 2 to 3 percent of the income at the retail level (\$5.8 billion).

The projected cost due to the Guidelines represents expenditures for conducting laboratory and field testing, and developing the reports of such tests. While registrants will initially bear the costs, we expect that the cost will be passed on to the pesticide users. The per-farm costs was estimated in 1980 to be \$63 to \$70 per year, including \$21 due to costs of new requirements in the Guidelines.

We do not expect these Guidelines to have any significant effect on employment in the pesticide industry, or to have any other nationally significant economic effects. We do expect producers of some pesticides of small economic significance to withdraw their products from the market rather than go to the expense of developing the required data. In this situation, we expect consumers to choose other available pesticides.

Related Regulations and Actions

Internal: EPA is also developing testing standards for chemical substances and mixtures under the Toxic Substances Control Act (TSCA). As far as possible, EPA will make the pesticide testing methods prescribed by the Guidelines consistent with the TSCA test standards. The Good Laboratory Practice standards we are developing under TSCA and FIFRA, which prescribe uniform standards of performance for toxicological testing, will also be consistent.

External: Under the aegis of the Interagency Regulatory Liaison Group, five Federal agencies (EPA, the Food and Drug Administration, the Occupational Safety and Health Administration, the Consumer Product Safety Commission, and the Department of Agriculture) are jointly developing guidelines describing test methods and standards that will meet all five agencies' needs.

For guidelines on toxicology testing, the Agency is also working with the Organization for Economic Cooperation and Development (OECD). This group is developing international testing standards, and has the cooperative input of 24 other countries besides the United States. In published form, our toxicology guidelines (Subpart F) will be consistent with the international standards.

Active Government Collaboration

FIFRA §§ 25(a) and (d) requires the Administrator of EPA to provide copies of draft proposed and final regulations to the Department of Agriculture, the Committee on Agriculture in the House of Representatives, the Committee on Agriculture and Forestry in the Senate,

and the FIFRA Scientific Advisory Panel. Reviews by these groups provide technical, legal, and scientific oversight to the guidelines at stages near publication in the *Federal Register*.

Agencies and other Government groups that we have consulted or that have provided assistance in Guidelines development include members of the Interagency Regulatory Liaison Group, the National Cancer Institute, the Department of the Interior, and the Department of Agriculture. The latter department is required by FIFRA to comment on proposed and final regulatory documents.

Timetable

The current rulemaking process began in 1973 and is expected to continue until 1982-83. There are a number of subparts to the regulations, which will have separate NPRMs, public hearings, Regulatory Analyses, and requests for public comment. We intend to publish the following portions as NPRMs in early 1981: Subpart G (Product Performance); Subpart H (Label Development); Subpart K (Exposure Data Requirements: Reentry). An overall Regulatory Analysis will be prepared for the entire Guidelines when we publish most of the subparts as Final Rules.

A detailed timetable is available from the Agency Contact listed below. Once we develop the basic regulations, we will update and revise the timetable as necessary.

Available Documents

An economic impact analysis based on those portions of the Guidelines already published in 1978 was prepared for public comment on September 6, 1978 (43 FR 39644). Its title is "Economic Impact Analysis of Guidelines for Registering Pesticides in the U.S." This analysis covered the cost of Subparts B, D, E, and F that would be responsible for 90 percent of the total costs of the Guidelines. With the publication of each subsequent subpart, we intend to make available brief analyses set in the context of the incremental and total costs of the Guidelines. Following or concurrent with the publication of most subparts as final rules we will publish an overall Regulatory Analysis for the entire Guidelines.

We have published the following portions of the Guidelines as NPRMs:

Subpart B—Introduction, 43 FR 29606, July 10, 1978. (This subpart will become Subpart A when published final.)

Subpart D—Chemistry Requirements, 43 FR 29696, July 10, 1978. (This subpart will be divided into five subparts when published final: D—Chemistry Requirements: Product Chemistry; K—

Exposure Data Requirements: Reentry; N—Chemistry Requirements: Environmental Fate; O—Residue Chemistry; and P—Data to Support Disposal Instructions.)

Subpart E—Hazard Evaluation: Wildlife and Aquatic Organisms, 43 FR 29696, July 10, 1978.

Subpart F—Hazard Evaluation: Humans and Domestic Animals, 43 FR 37336, August 22, 1978.

Subpart F—Hazard Evaluation: Humans and Domestic Animals (two additional general sections on good laboratory practices for toxicology testing) 45 FR 26373, April 18, 1980. (This proposal will be separated from Subpart F when developed into a final rule.)

Subpart I—Experimental Use Permits (publish November 1980).

Subpart J—Hazard Evaluation: Nontarget Plants and Microorganisms (publish November 1980).

Subpart L—Hazard Evaluation: Nontarget Insects (publish November 1980).

Subpart M—Data Requirements for Biorational Pesticides (we will publish in December 1980).

We have published or will publish the following portions of the Guidelines as final rules:

Subpart C—Registration Procedures (interim final), 40 FR 41788, September 9, 1975.

Subpart D—Chemistry Requirements: Product Chemistry (November 1980).

Subpart E—Hazard Evaluation: Wildlife and Aquatic Organisms (November 1980).

Subpart N—Chemistry Requirements: Environmental Fate (we will publish in December 1980).

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EPA-OPTS

Premanufacture Notification Requirements and Review Procedures (40 CFR Part 720) (44 FR 2242, January 10, 1979, 44 FR 59764, October 16, 1979)

Legal Authority

Toxic Substances Control Act (TSCA), § 5, 15 U.S.C. § 2604.

Reason for Including This Entry

The Environmental Protection Agency (EPA) thinks that this rule is important because the regulations may have a

substantial impact on the chemical industry.

Statement of Problem

To prevent public health risks and environmental contamination before potentially toxic substances are widely used and dispersed, Congress included a section on premanufacture notification in the Toxic Substances Control Act (TSCA). This section requires a manufacturer to notify EPA of his intent to manufacture or import a new chemical substance, and to submit information concerning that substance which the Agency can use to assess the risks associated with its manufacture, processing, distribution in commerce, use, or disposal. On the basis of this assessment and evaluation of economic considerations and other relevant factors, EPA will make decisions concerning the reasonableness of any risk, and will take appropriate action to obtain more information or data; regulate production or use; or require reporting by manufacturers, processors, or distributors of chemicals once the substance is in commerce. If EPA does not regulate the substance during the premanufacture notification period, the manufacturer may begin production (subject to regulation under any other laws).

To implement the notification process, EPA proposed a set of premanufacture notification rules and forms for public comment on January 10, 1979. In October, EPA repropose the forms and certain portions of the rule. The rules, when final, will clarify the statutory obligations of manufacturers and importers of new chemical substances to provide information on the substances, and will also clarify the Agency's procedures for reviewing the information. The forms will provide a detailed specification of the information they must submit and the formats in which they should supply the information. The manufacturers are responsible for assembling the information. EPA must decide, generally within 90 days of receiving the information, whether the substance in question presents an unreasonable risk to human health or the environment, and if so, what action to take.

Alternatives Under Consideration

There are several significant issues to be resolved in this rulemaking. Among them are the scope and the level of detail of information it should require; the identification of chemical substances for which industry must submit premanufacture notification to EPA; policies regarding the confidentiality of information submitted;

the extent to which the submitter must contact prospective customers to obtain relevant data; supplemental reporting; and whether and how EPA determines that submissions meet its requirements. EPA is considering other approaches to resolving these and related issues based on the comments received from individual and public interest groups which suggested alternatives to the initial proposal (see "Available Documents," NPRM for Proposed Rules and Other Issues—44 FR 59764, October 16, 1979.)

Summary of Benefits

Sectors Affected: Establishments and employees in the chemical industry; importing of chemical products; the general public; and the environment. The premanufacture review process will benefit public health and the environment by preventing the production, use, or disposal of new chemicals which present unreasonable risks. By preventing potential hazards at an early stage, EPA can minimize economic dislocation, especially that which would result if a chemical is in full production and use is withdrawn. Adverse employment effects and the obsolescence of plant equipment will be substantially reduced by early regulation. Preventing toxic chemicals from entering the environment also will decrease lost work days and hospitalization costs that result from worker exposure to toxic chemicals.

Summary of Costs

Sectors Affected: The chemical industry; and importing of chemical products. EPA is conducting an in-depth study of the premanufacture notification requirements to determine with a greater degree of confidence the nature of the costs and economic effects of this rulemaking. These effects will include the effect on research and development programs; industry sales, growth, and profitability; and the structure of the chemical industry. EPA will use the results of this study in making final decisions on how to implement the premanufacture notification program. Preliminary results of this analysis estimated that the notice form proposed on January 10, 1979 would cost between \$2,500 and \$22,500 to complete for each submitter, in current dollars. Estimates for the October 16 republished shortened form indicated that completion of the revised form would cost between \$1,155 and \$8,925 in current dollars. It has also been estimated that approximately 400 notices would be submitted per year. Therefore, the total cost of providing the

notice forms in a typical year would be between \$462,000 and \$3,570,000. October 16 cost estimates also included costs of between \$0 and \$6,400 for asserting and substantiating claims of confidential business information in connection with the notice submission.

The fiscal year 1981 EPA operating plan for implementing the premanufacture notification program is \$5,720,000.

Related Regulations and Actions

None.

Active Government Collaboration

Other Federal agencies that have been involved in this rulemaking include the Consumer Product Safety Commission, the Occupational Safety and Health Administration, the Food and Drug Administration, the Department of Transportation, and the Bureau of the Census.

Timetable

Regulatory Analysis—Winter 1980–81.
Final Rule—April 1981.
Final Rule Effective—30 days following publication of the Final Rule.

Available Documents

Public Comments.
NPRM for Premanufacture Notification Requirements and Review Procedures—44 FR 2242, January 10, 1979 (Docket number OTS 050002).
Discussion of Premanufacture Testing Policy and Technical Issues—44 FR 16240, March 16, 1979 (Docket number OTS 050002).
Interim Policy Statement—44 FR 28558, May 15, 1979 (Docket number OTS 050002).
NPRM for Proposed Processor Requirements, Premanufacture Review Program—45 FR 54642, August 15, 1980 (Docket number OTS 050002).
These documents are available from the Agency Contact listed below.

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EPA-OPTS

Title

Rules Restricting the Commercial and Industrial Use of Asbestos Fibers (40 CFR Part 763)

Legal Authority

Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 and 2605.

Reason for Including This Entry

The Environmental Protection Agency (EPA) has included this action because of its potential economic impact on the asbestos industry. The economic cost of the rule will probably exceed \$100 million. We may prohibit a large portion of the domestic production and importation of asbestos-containing products into the United States.

Statement of Problem

Epidemiological studies have established that exposure to asbestos fibers can contribute to increased risk of lung damage (asbestosis) and human cancer of several kinds.

EPA is concerned that in spite of past governmental regulation of asbestos, millions of Americans may be exposed to levels of asbestos that significantly increase the risk of contracting asbestos-related diseases. (Past regulations are cited below under Related Regulations and Actions.) Currently, more than two million workers are exposed to asbestos fibers (at levels higher than background) in their places of employment. In addition, the 159 million Americans who live in urban areas may be exposed to asbestos fiber levels that significantly increase the risk of contracting asbestos-related diseases. EPA is concerned that asbestos fiber emissions from the mining, milling, processing, or distribution of asbestos or from the use, misuse, or disposal of asbestos-containing products might cause significant pollution of urban air.

It is difficult to estimate the number of people who will contract asbestos-related diseases at current exposure levels. Data on mortality rates are available for workers who are exposed to asbestos fiber levels considerably higher than general population exposures. EPA will extrapolate to predict risks for the general population.

EPA is conducting this regulatory program because the Agency is not convinced that existing regulations have adequately protected the public. These regulations have focused on limited aspects of the asbestos exposure problem, such as worker exposures, air emissions from manufacturing facilities,

and some consumer products. Regulation under the Toxic Substances Control Act (TSCA) would eliminate unreasonable human health risks from all asbestos-related activities. The comprehensive mandate of TSCA enables EPA to reduce health risk from sources that are difficult to control through medium-specific or source-specific regulation authorized under other Federal authorities. Under TSCA, EPA is currently investigating the cumulative effects of exposure to asbestos throughout its life cycle in commercial and industrial products from mining and milling through processing, product manufacturing, use, and disposal. Our preliminary studies indicate substantial continuing exposure of millions of people to the ever growing inventory of asbestos sources. As a result of this study, the Agency expects to promulgate rules to prevent and reduce any unreasonable risks that are identified.

Alternatives Under Consideration

EPA is considering the following alternative actions: (A) prohibiting the manufacture, processing, distribution in commerce, and importation of asbestos for all nonessential asbestos uses; (B) restricting the quantity of fibers that could be mined and imported, or processed annually in the United States, thus allowing the marketplace to determine which products and uses to eliminate; (C) developing other marketplace regulatory strategies; (D) requiring labeling of asbestos containing products; (E) regulating under laws other than TSCA; and (F) taking no regulatory action.

EPA's choice of a regulatory program will depend on the seriousness of the risks and the identification of the major sources of exposure. EPA suspects that much of the asbestos to which the public is exposed comes from emissions caused by mining, milling, and processing asbestos fibers; emissions resulting from the use of asbestos-containing products may not be as significant. In that case, EPA would want to reduce risks from mining, milling, and processing as much as possible (alternative A). A disadvantage of alternative A would be that both the affected industry and EPA would be involved in extensive exemption proceedings.

Alternative B is a possible substitute for alternative A. The allocation of quotas could be a very difficult process and could result in some inequities within the industry. Further, at this time it is not clear that the economic impact of such an approach would be any less than alternative A. The major advantage

of alternative B over alternative A is that the marketplace would decide which uses of asbestos should continue.

Alternative C involves developing other marketplace strategies. A disadvantage of both alternatives B and C is that since they have never been attempted before, the implementation problems are unknown. Also, there would be no guarantee of eliminating products that present a particularly high health risk. For example, if a product with fibers that are easily released commands a relatively high price, it might remain in the marketplace much longer than if it were regulated specifically. However, if necessary, a market strategy could be modified to eliminate this problem.

EPA is considering imposing a labeling requirement (alternative D) either in addition to or in lieu of other requirements. A labeling rule would have considerably less economic impact than alternatives A, B, or C, and it would also provide less direct protection to public health. Alternative D, if implemented alone, would increase awareness of the hazards of asbestos and would increase recognition of products that can cause these health risks. However, it would not force any reduction in exposure to asbestos fibers.

EPA is considering either regulating under other Federal laws administered by EPA or not regulating in deference to other Federal agencies (alternative E). Several comments on the ANPRM (44 FR 60056, October 17, 1979) indicated that industry does not consider TSCA to be appropriate authority for regulating asbestos and that further Federal regulation, if needed, should be implemented under other laws, particularly the Occupational Safety and Health Act (OSH Act). Although the Occupational Safety and Health Administration (OSHA) has announced its intention to lower its workplace standard to 0.1 fiber per cubic centimeter, OSHA lacks the legislative mandate to address the problem of asbestos exposure outside of the workplace. EPA action to restrict production and importation of products containing asbestos may be necessary to complement the OSHA workplace standard for airborne asbestos.

Any action by the Consumer Product Safety Commission (CPSC) would not affect production of industrial asbestos-containing products, and these production processes may cause significant fiber emissions.

A combination of EPA actions under the Clean Air Act, Clean Water Act, Safe Drinking Water Act, Resource Conservation and Recovery Act, and other laws might significantly reduce

asbestos-related risks. However, the EPA Administrator might find that it is in the public's interest to regulate under TSCA because the limited mandate of these other laws results in continued risk from asbestos.

Alternative F, taking no regulatory action, would benefit the asbestos industry since it would incur no costs. However, there would also be no reduction in the exposure to asbestos in the United States.

Summary of Benefits

Sectors Affected: Establishments and workers in the asbestos industry (including asbestos mining and asbestos product manufacturing); the general public; and establishments that manufacture asbestos substitutes.

At this early stage of development of EPA's rule, it is difficult to estimate benefits in quantitative terms. Regulation will decrease the incidence of asbestosis and lung cancer in the United States, thereby decreasing the number of worker-days lost due to worker sickness, increasing space available in hospitals, and decreasing costs due to illness and premature death.

EPA regulation of asbestos should increase demand for substitutes such as fiberglass, ceramic fibers, polyvinylchloride, and ductile iron pipe. Therefore, manufacturers and distributors of substitutes should benefit from regulation.

Summary of Costs

Sectors Affected: Establishments and workers in the asbestos industry (including asbestos mining and asbestos product manufacturers); and their suppliers; importers of asbestos and asbestos products; and users of asbestos products.

Because EPA has not completed its analysis of economic effects, cost estimates are not available. Asbestos mines and asbestos processors will be forced to reduce production, and many processors will be forced out of the asbestos business. EPA plans to regulate in a manner that will allow asbestos processors time to convert to substitutes. Small businesses may seek aid from the Small Business Administration to obtain capital to convert. It is too early to predict the effect of regulation on employment. EPA hopes that jobs lost from the asbestos industry will be offset by jobs gained in the substitutes industries. Substitute products generally cost more than asbestos-containing products, and these costs will be passed on to consumers.

Related Regulations and Actions

Internal: EPA has established National Emission Standards for Hazardous Air Pollutants for several asbestos sources under the Clean Air Act, 42 U.S.C. § 7401 *et seq.* EPA is developing effluent guidelines regulating wastewater discharges of asbestos under the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, as amended in 1972 and 1977. It is also considering additional regulation of asbestos in drinking water under the Safe Drinking Water Act, 42 U.S.C. § 3006 *et seq.*

The Agency is developing a rule to require surveys to determine whether asbestos hazards are present in public schools because of deteriorating insulation. EPA is also considering requiring appropriate corrective measures where it finds hazards (see 44 FR 54676, September 20, 1979). Other existing asbestos sources that the Agency may control in the future include public buildings where asbestos was used as an insulation or decorative material and merchant ships where asbestos is widely used as insulation.

EPA regulations directed specifically to asbestos are found in 40 CFR Part 61 (air) and Parts 129 and 427 (water).

External: EPA and CPSC both published ANPRMs on October 17, 1979 in the Federal Register (44 FR 60053). These ANPRMs were prefaced by a Joint Statement of Cooperation signed by the EPA Administrator and the CPSC Chairman. The statement indicated how the two agencies will cooperate and direct their regulatory efforts to minimize reporting requirements and other burdens on industry, and to improve overall public health. EPA is planning to promulgate a rule under § 8(a) of TSCA to require manufacturers and processors of asbestos fibers to submit economic and exposure information. EPA has proposed a rule under § 8(d) of TSCA requiring industry to submit unpublished health and safety studies relating to asbestos. CPSC is planning to issue a general order requiring manufacturers and private labelers of some categories of consumer products to submit information on the use of asbestos in those products. CPSC will not require the submission of information already submitted to EPA.

OSHA plans to lower its workplace standard for asbestos exposure (8-hour time-weighted average) from 2 f/cc (fibers per cubic centimeter) to 0.1 f/cc. This action is in response to a recommendation in April 1980 by the joint National Institute for Occupational Safety and Health (NIOSH)-OSHA Asbestos Work Group that "a new

occupational standard be promulgated which is designed to eliminate nonessential asbestos exposures, and which requires the substitution of less hazardous and suitable alternatives where they exist."

Asbestos regulations promulgated in the past by other agencies are as follows:

CPSC—16 CFR Parts 1145, 1304, and 1305; OSHA—29 CFR Part 1910; FDA—21 CFR Parts 121, 128, 133, and 191; DOT—49 CFR Parts 170-189; MSHA—30 CFR Parts 55, 57, and 71.

Active Government Collaboration

To maximize the effectiveness of this proposed rule, EPA is coordinating either directly or through the Interagency Regulatory Liaison Group (IRLG) with the Occupational Safety and Health Administration (OSHA), the Consumer Product Safety Commission (CPSC), the Food and Drug Administration (FDA), the Mine Safety and Health Administration (MSHA), and the Department of Transportation (DOT).

In July, 1980, EPA and the Consumer Product Safety Commission (CPSC) cooperated in sponsoring and organizing a 3-day workshop on substitutes for various uses of asbestos in commercial and industrial products. About 500 persons attended the workshop, which was designed to increase industry's awareness of substitutes for asbestos and to expand EPA's and CPSC's data base. EPA was the lead agency in coordinating the workshop.

Timetable

NPRM—August 1981.
Regulatory Analysis—Draft Regulatory Analysis, August 1981; final version, August 1982.
Public Hearing—December 1981, Washington, DC.
Public Comment Period—August 1981–December 1981.
Final Rule—August 1982.
Final Rule Effective—September 1982.

Available Documents

ANPRM for Asbestos-Containing Materials in School Buildings, 44 FR 54676, September 20, 1979.
ANPRM for Commercial and Industrial Use of Asbestos Fibers, 44 FR 60056, October 17, 1979.
Comment period extended, 44 FR 73127, December 17, 1979.

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EPA—Office of Water and Waste Management**Control of Organic Chemicals in Drinking Water (40 CFR Part 141*)****Legal Authority**

The Safe Drinking Water Act, as amended, § 1412, 42 U.S.C. § 300(f) *et seq.*

Reason for Including This Entry

The Environmental Protection Agency (EPA) includes this regulation because it is likely to impose compliance costs of over \$100 million.

Statement of Problem

Recent technological developments in sophisticated analytical measurement techniques have resulted in the identification of numerous organic contaminants in drinking water that may pose a health risk to consumers. For example, chloroform, a suspected human carcinogen, is only one of many synthetic organic chemicals known to be present in drinking water. Chloroform is representative of a class of chemicals known as trihalomethanes (THMs), whose presence in drinking water was controlled by rules finalized at 44 FR 68624 on November 29, 1979. Future measures to control organic chemicals in drinking water are proceeding through two related approaches:

I. Treatment Technique Requirement for the Control of Synthetic Organic Chemicals—reproposal under consideration.

II. Control of volatile organics in drinking water; ANPRM late December 1980.

I. Treatment Technique Requirement: Synthetic Organic Chemicals.

Synthetic organic chemicals are chemicals which enter sources of drinking water as a result of industrial discharges, spills, sewage discharge, and non-point sources, such as urban and rural rainwater run-off. Some of these organic chemicals are either known or suspected carcinogens. The list of synthetic organic chemical contaminants that have been found at least once in drinking water has grown to over 1,000. Because of the technical infeasibility of controlling every synthetic organic contaminant individually by setting a maximum contaminant level (MCL), EPA is evaluating if control of a broad spectrum of organic chemicals by a treatment technique (filtering water through

granular activated carbon) or equivalent technology would be appropriate in certain locations where substantial risk of contamination exists. The intent of applying a treatment technique at certain water supplies would be to improve the quality of drinking water at the tap and reduce the health risk to the public from long term exposures to synthetic organic chemicals in drinking water. EPA proposed regulations on February 9, 1978 (43 FR 5756), which would have required granular activated carbon (GAC) treatment to be installed at public water systems vulnerable to contamination by synthetic organic chemicals. Since the proposal, further information has become available regarding the performance of GAC; EPA is also conducting additional studies and will evaluate all of the available data to assess the appropriate regulatory action. If it is determined that the regulations should be repropoed, the repropoed would become one portion of the National Revised Primary Drinking Water Regulations which will apply to all public water systems in the United States.

Alternatives Under Consideration

The alternatives being considered include requirements for community water systems to install granular activated carbon treatment (GAC), or its equivalent, if they use sources of drinking water which are vulnerable to contamination by synthetic organic chemicals. The repropoed regulations will consider, among other possibilities, changes in the application of the GAC technology, as the required treatment might be achieved by replacing sand with GAC in existing filter beds. The frequency of reactivation (i.e., the process whereby adsorbed chemicals are removed from the GAC, restoring its capacity for adsorption) could be specified in the regulation. Reactivation frequencies under consideration range from 6 months to 1 year. On-going work being performed by EPA's Office of Research and Development is expected to broaden significantly our knowledge in this area; further, a survey is being conducted by EPA's Office of Drinking Water of water treatment systems in the U.S. that currently use GAC. This survey should provide information regarding the effectiveness of GAC for control of organic chemicals.

The criteria set forth in the original proposal for determining which public water systems are vulnerable to contamination by synthetic organic chemicals are currently being reevaluated; the repropoed regulations may specify rivers or stream segments that we consider to be subject to

contamination by synthetic organic chemicals. These water sources would be chosen after an evaluation of the number and type of industrial/municipal discharges upstream of drinking water intakes, an estimate of the transportation of industrial and agricultural chemicals on the waterway and a review of the potential for contamination from non-point sources.

Summary of Benefits

Sectors Affected: The general public; municipally and privately owned public water systems; all segments of the water supply industry, including consulting sanitary engineers, analytical chemists, plant operators, and equipment manufacturers and suppliers.

A repropoed treatment technique for control of synthetic organic chemicals would provide protection to a larger population at a lower per capita cost (upwards of 80 percent of the American population at a per capita cost of \$2.60 to \$7.10) than would the original proposal (52 percent of the population and \$7.10 to \$26.10, respectively). The repropoed technique would provide broad spectrum protection from synthetic organic contaminants and could be implemented 2 to 3 years earlier than the original proposal.

Summary of Costs

Sectors Affected: State and local government; municipal and privately owned public water systems; and consumers in communities installing GAC facilities.

The estimated total national capital cost to implement a repropoed is \$333 million over 3 years (in 1980 dollars). It is estimated that such expenditures would increase local water rates by an average of approximately \$5 per year per family of three in those communities whose water supply system would install GAC facilities.

Related Regulations and Actions

Internal: All EPA regulations that affect control of chemical contamination of water would be indirectly related, including: Effluent Guidelines, National Pollution Discharge Elimination System, and Water Quality Criteria.

External: State programs would deal with decisions on variances and exemptions from the regulations, and would provide technical assistance to public water systems making changes in their treatment processes.

Active Government Collaboration

Supporting documentation for the health basis of the proposed regulation requires information-sharing with the

National Cancer Institute, National Institute of Environmental Health Sciences, Consumer Product Safety Commission, Occupational Safety and Health Administration, and the Food and Drug Administration. Also, we have gained data supporting development of criteria to determine if public water systems are vulnerable to contamination by synthetic organic chemicals through cooperation with the Coast Guard, Department of Transportation, and the Department of Commerce.

Timetable

Following the current ODW survey of existing water treatment with GAC, all available information and data will be evaluated to determine the appropriate regulatory approach for implementation of control measures for synthetic organic chemicals in drinking water from surface water supplies. The evaluation should be complete by Summer 1981 and a decision will be made at that time regarding the appropriate approach and timetable.

Available Documents

- ANPRM—41 FR 28991, July 14, 1976.
 - NPRM—43 FR 5766, February 9, 1978
 - "Drinking Water and Health," National Academy of Sciences, 1977.
 - "National Organics Reconnaissance Survey," EPA, Municipal Environmental Research Laboratory, 1975.
 - "National Organics Monitoring Survey," EDA, Office of Drinking Water.
 - "Statement of Basis and Purpose for an Amendment to the National Interim Primary Drinking Water Regulations on a Treatment Technique for Synthetic Organic Chemicals," EPA, Office of Drinking Water, 1977.
 - "Economic Analysis of Proposed Regulations on Organic Contaminants in Drinking Water," EPA, Office of Drinking Water, 1977.
 - "Draft Interim Treatment Guide for the Control of Synthetic Organic Contaminants in Drinking Water Using Granular Activated Carbon," EPA, Municipal Environmental Research Laboratory, 1978.
 - "Revised Economic Impact Analysis of Proposed Regulations on Organic Contaminants in Drinking Water," EPA, Office of Drinking Water, 1978.
 - "Operational Aspects of Granular Activated Carbon Adsorption Treatment," EPA, Municipal Environmental Research Laboratory, 1978.
 - National Academy of Sciences Study on Granular Activated Carbon, 1979.
- #### Agency Contact
- Joseph A. Cotruvo, Ph. D., Director
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II. Control of Volatile Organics in Drinking Water.

Recent information indicates that a number of volatile organic chemicals exist in both raw and finished drinking waters, particularly in ground water supplies which have been contaminated by improper waste disposal practices. Accordingly, an ANPRM will be published that will set forth current considerations in the development of maximum contaminant levels (MCLs) for certain volatile organic chemicals in the Revised Primary Drinking Water. At this time, contamination of drinking water by volatile organics has been found to be most serious in ground waters in urbanized and industrial areas. The levels of occurrence, coupled with the suspected carcinogenicity and toxicity of several identified compounds, appear to support the setting of MCLs for the following compounds:

- Trichloroethylene
- Carbon tetrachloride
- Tetrachloroethylene
- 1,2-Dichloroethane
- 1,1,1-Trichloroethane
- cis-1,2-Dichloroethylene
- trans 1,2-Dichloroethylene
- 1,1-Dichloroethylene
- Methylene chloride
- Vinyl chloride
- Benzene

If EPA takes no action with regard to the above chemicals, a possible health risk to the public will continue to exist and the overall quality of drinking water will be suspect in those groundwater areas. Most of these chemicals are suspected carcinogens, while certain of them are known mutagens and/or teratogens.

Alternatives Under Consideration

Specific options are being developed and alternatives will be separately evaluated for each contaminant. MCLs will be proposed only after careful evaluation of the best available evidence in the areas of epidemiology, toxicology, analytical methods, quality assurance, monitoring requirements, feasibility and efficiency of competing treatment methods, and economic impacts.

Summary of Benefits

Sectors Affected: The sectors affected include the American public in general; municipally and privately owned public water supply systems; and all segments of the water supply industry, including consulting sanitary

engineers, analytical chemists, plant operators, and equipment manufacturers and wholesalers.

These MCLs will have their greatest impact on small water supply systems which currently employ little or no treatment. The public served by such systems will, in particular, realize the benefits of this proposal.

It is impossible at this time to assign direct monetary values to the benefits to be realized under this proposal. Such benefits include a lessening of public exposure to toxic substances in drinking water and a consequential safeguarding of public health.

Summary of Costs

Sectors Affected: General public; State and local governments; and public water systems (both privately and publicly owned).

The public in general will be the principal group affected by this proposal, since the users will undoubtedly bear the costs of any necessary modifications to their water supply system. This will be true particularly for users of small water supply systems that currently employ little or no treatment.

No estimates of the economic impact are available at this time.

Related Regulations and Actions

Internal: All EPA regulations that affect control of chemical contaminants of water are indirectly related, including: Effluent Guidelines, National Pollution Discharge Elimination System, Water Quality Criteria, Hazardous Waste Disposal Controls, and Underground Injection Control.

External: State programs would be expected to deal with decisions on variances and exemptions from the regulations and to provide technical assistance to public water systems making changes in their treatment processes.

Active Government Collaboration

Supporting documentation for the health basis of any regulation requires information-sharing with the National Cancer Institute, National Institute of Environmental Health Sciences, Consumer Product Safety Commission, and the Food and Drug Administration. In addition, the National Academy of Sciences and the National Drinking Water Advisory Council will be consulted during the development of MCLs.

Timetable

ANPRM—Late Fall 1980.
Public Technical Seminar (to be announced)—Winter 1980-81.

NPRM—Spring 1981.
Regulatory Analysis—Undecided.
Public Hearings (to be announced)—Summer 1981.
Final Rule—Spring 1982.

Available Documents

"National Organics Reconnaissance Survey," EPA, Municipal Environmental Research Laboratory, 1975.
"National Organics Monitoring Survey," EPA, Office of Drinking Water.
"Interim Treatment Guide for Controlling Organic Contaminants in Drinking Water Using Granular Activated Carbon," EPA, Municipal Environmental Research Laboratory, January 1978.

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EPA—OWWM

Hazardous Waste Regulations: Phase I and II Regulations to Control Hazardous Solid Waste from Generation to Final Disposal (40 CFR Parts 260, 261, 262, 264, 265, and 266)

Legal Authority

Resource Conservation and Recovery Act of 1976 (RCRA), as amended, §§ 3001, 3002, and 3004, 42 U.S.C. §§ 6921, 6922, and 6924.

Reason for Including This Entry

These regulations are important because they initiate, for the first time on a national level, management of hazardous solid waste from generation to final disposal. The Environmental Protection Agency (EPA) includes them in the Calendar to inform the regulated community and the general public of EPA's continuing actions to implement a national hazardous solid waste program.

Statement of Problem

EPA estimates that more than 54 million metric tons of hazardous waste is generated annually in the United States. Hazardous waste includes toxic chemicals, pesticides, acids, caustics, flammables, and explosives. Of this hazardous waste, EPA estimates that 90 percent has been managed by practices that will not meet the new Federal standards. A variety of health and environmental damages result from improper management practices. The most frequent are damages resulting from direct contact with toxic waste; fire and explosions; groundwater

contamination by leachate; surface water contamination through runoff or overflow; air pollution by open burning, evaporation, and wind erosion; and poisoning through the food chain. The amount of hazardous waste will increase by 30 percent in the next decade, primarily because other environmental laws have curtailed emissions into the air, waterways, and oceans.

EPA has information on more than 400 cases of damage to human health or the environment due to improper hazardous waste management. One such case, Love Canal in Niagara Falls, New York, occurred because the hazardous waste facility was not properly monitored after it was closed. This resulted in the evacuation of 239 local families at relocation costs of approximately \$10 million, projected clean-up costs of over \$30 million, and health problems, including possible increases in birth defects, miscarriages, and liver and respiratory disorders. With as many as 30,000 hazardous waste disposal sites posing potential public health and environmental threats, hundreds of millions of dollars in damages and remedial costs could result if the problem is left unattended.

Alternatives Under Consideration

We studied a number of alternatives during the development of the final regulations. Several significant changes to the regulations required reproposal, partial promulgation, or promulgation of interim final rules for parts of §§ 3001 and 3004 of the Resource Conservation and Recovery Act of 1976 (RCRA). Consequently, rules that were not ready for promulgation by May 19, 1980 will be issued in late 1980 and early 1981 as Phase II regulations. In the preamble to the rules issued May 19, 1980 as Phase I, EPA discusses in detail the alternatives considered and the reasons for their selection or rejection.

To achieve a better balance between the often competing goals of regulatory specificity and broad standards, EPA has promulgated specific standards where appropriate and used broader ones or exceptions or variances where more flexibility is required. EPA has issued a notice of intent to issue regulatory amendments and interpretive guidance where situations of inappropriate results from application of the standards occur.

EPA promulgated the initial phase of RCRA § 3001 regulations on May 19, 1980. It identified four characteristics of hazardous waste (ignitable, corrosive, reactive, or toxic) to be used by persons handling solid waste to determine if that waste is hazardous. In addition, it listed

85 process wastes as hazardous wastes and approximately 400 chemicals as hazardous wastes if they are discarded. This regulation also set forth the criteria used by EPA to identify characteristics of hazardous wastes and to list hazardous wastes. Because of limited resources, we have tried to prioritize our efforts to deal with the most serious environmental problems first and to finalize those portions of the proposed regulations of December 18, 1978, which we must issue if a core hazardous waste management program is to be implemented.

We deferred until Phase II final action on a number of aspects of the proposed regulation, including integrating regulating polychlorinated biphenyls ("PCBs") under RCRA and the Toxic Substances Control Act ("TSCA"); fully regulating wastes that are used, re-used, reclaimed, or recovered; infectious wastes; radioactive wastes; and a number of proposed listed wastes. We expect to finalize regulations for the first three of these and for uranium and phosphate radioactive wastes by the end of 1980. Congressional action on the RCRA reauthorization bill deferred regulation of uranium and phosphate radioactive wastes until 6 months after a study is completed. However, EPA plans to promulgate regulations regarding the use of these wastes in building materials for habitable structures. The other waste streams we deferred from final action included those wastes which EPA intends to list as hazardous but for which revised background documents could not be completed by May 19, wastes for which more information was needed to determine that they were hazardous, wastes which available data suggested are not hazardous, and wastes which are no longer produced. On July 16, EPA listed 18 wastes from this first category and proposed that seven more be listed. We plan to finalize these last seven wastes by late 1980. As significant health effects information on other wastes becomes available, these too will come under control.

RCRA § 3002, which outlines the standards for generators of hazardous waste, was promulgated February 26, 1980 and clarified May 19, 1980. Generators must prepare manifests for all shipments of hazardous waste that are sent to off-site treatment, storage, or disposal facilities, where personnel also fill out the manifest form. This form traces the hazardous waste from generation to ultimate disposal. Generators are also required to keep records, report those shipments which do not reach the facility designated on

the manifest, and submit an annual summary of their activities to EPA. The May 19, 1980 changes included requiring a generator to designate a facility, or accept the waste if it cannot be delivered to the designated or alternate facility; expanding the requirements for accumulation of hazardous wastes in tanks; and requiring that generators develop contingency plans.

The regulations adopted a system which tiers special requirements for hazardous waste produced by small generators: low quantity (1 to 100 kilograms per month) exclusion limits for certain extremely hazardous wastes; and an initial general exclusion limit for generators of less than 1,000 kilograms per month of other hazardous wastes in combination with disposal conditions. The second exclusion assumed that small amounts of hazardous waste will be disposed of in land disposal facilities approved under RCRA Subtitle D and, therefore, will not pose a hazard to human health or the environment. This approach should allow EPA and the States to focus limited enforcement and implementation resources on those generators producing over 95 percent of all hazardous waste.

On May 19, 1980, EPA issued a revision of part of its proposed rule of December 18, 1978 under RCRA § 3004, outlining the requirements for financial responsibility which owners and operators of hazardous waste management facilities must meet. Under this revised proposal, as in the original, EPA would require these owners or operators to provide assurance that funds will be available when needed for properly closing the facility and, in the case of a disposal facility, for maintaining and monitoring it after closure. We proposed the revised provisions for financial assurance for inclusion both in the general standards to be used in permitting (Part 264) and in the standards for facilities in interim status (Part 265). The revised proposal includes a new requirement for liability insurance for facilities in interim status. EPA repropose this rule because of the many new and revised provisions which have not been subject to public review. The changes have resulted from further analyses by the Agency in response to public comment on the original proposal. We are now examining the comments on the revised proposal and considering them in writing our final regulations, which we expect to promulgate in November 1980, as part of the Phase II regulations.

The revised proposal allows a number of options in providing financial assurances, while the original proposal

had only one option, trust funds. We believe that expanding these options will enable facilities to choose the method most feasible for their situation. The options include a surety bond, a letter of credit, a financial test and guarantee, and a revenue test. A trust fund is established by the owner or operator of a hazardous waste facility and held by a financial institution as a trustee, with fiduciary responsibility to carry out the terms of the trust, to be specified in the regulation. A surety bond is a contract by which a surety company engages to be answerable for the default or debt by the owner or operator of a hazardous waste facility on responsibilities relating to closure or post-closure care of that facility and agrees to satisfy these responsibilities, if the owner or operator does not satisfy them, in accordance with the terms to be specified in the regulation. A letter of credit is an irrevocable engagement by an issuing financial institution, at the request of an owner or operator of a hazardous waste facility. The institution will honor demands for payment made by EPA, for the period of the letter of credit and under the terms to be specified in the regulation. The financial test and guarantee refers to those requirements to be specified in the regulation which private sector organizations must meet to be considered financially responsible. This could include requirements such as enough capital to cover closure and post-closure care of such facilities. The revenue test refers to those requirements to be specified in the regulation which municipalities must meet to be considered financially responsible. This could include requirements such as enough revenues from taxes and other sources to cover closure and post-closure of hazardous waste facilities for which the municipalities are responsible.

The proposed RCRA § 3004 standards of December 18, 1978 were intended to ensure the proper design, construction, and operation of hazardous waste management facilities. Lacking information on long-term experience in advanced waste management technologies, EPA deferred promulgation of nationally applicable technical standards. Accordingly, these standards are being promulgated and implemented in phases.

The Phase I standards are minimum requirements, primarily administrative, appropriate for all wastes during the Interim Status Period. Other general technical requirements, e.g., waste analysis, training, and contingency

plans, provide flexibility for inclusion of facility-specific factors.

To issue permits protecting human health and the environment, in the absence of the detailed national technical standards, EPA must evaluate the technical capabilities of specific facilities to manage hazardous wastes. Phase II of the RCRA § 3004 regulations will be a set of technical regulations allowing permits to be issued based on the Agency's best engineering judgment of the technical requirements to be met by individual facilities. These regulations will allow permits to be processed by evaluating such facilities for both site-specific factors and characteristics of the waste the facility will manage. At a minimum, these regulations will contain a set of factors (e.g., distance to groundwater and waste mobility) which must be considered. Where available, the regulations will also contain models, formulas, and performance standards to provide a standardized method of analysis. To determine whether a facility will adequately safeguard human health and the environment, EPA will apply best engineering judgment to data which the permit applicant submits concerning these factors. This approach is appropriate because the possible combinations of types of wastes and management scenarios are almost infinite. We expect to issue these technical regulations in November 1980.

Phase III of the regulatory program will involve the promulgation of more definitive counterparts of the Phase II standards, superceding them and making permitting a more straightforward process. The Phase III standards will include both standards for specific types of facilities such as tanks, surface impoundments, piles, landfills, and incinerators, as well as standards for specific industries and wastes requiring special management standards. All standards for Phases I, II, and III allow variances to selected individual standards if an equivalent degree of protection or performance can be demonstrated.

Summary of Benefits

Sectors Affected: The general public; all industries handling hazardous waste, especially manufacturing; EPA; and financial institutions.

By issuing these regulations, EPA is creating a framework for the control of hazardous wastes which would otherwise contaminate groundwater, surface waters, and soils; poison humans and animals; and cause air pollution, fires, and explosions. These regulations are part of a series of seven

required by Subtitle C of RCRA to initiate hazardous waste management nationally. The regulatory program will reduce the incidence of damage to human health and the environment and save hundreds of millions of dollars in the costs associated with clean-up, emergency response, and health and environmental damages.

The expected improvements are not quantifiable, however, since records of past practices and problems are extremely limited. Also, it is difficult or impossible to quantify benefits derived from reduced adverse impacts on health or the environment. In addition, EPA expects an improvement in economic efficiency and equity, and substantial direct savings from avoiding clean-up costs in the future. Pre-RCRA practices for managing hazardous waste created economic inequities as the cost of disposal often fell randomly on individuals due to improper management or on the public at large, since tax revenues were used to clean up inadequate facilities. Pre-RCRA industry management practices also created economic inefficiency as the prices of goods did not include the cost of properly managing the waste produced. Under RCRA, Subtitle C, the economy will be more efficient and equitable because those receiving the benefits will also pay the costs, and prices will serve as a more efficient allocator of resources.

Comprehensive regulatory controls over the generation, movement, storage, and treatment of hazardous wastes may also help reduce opposition to the siting of hazardous waste management facilities. Overcoming the barrier of local opposition will allow siting of management facilities at environmentally secure sites and further reduce the possibility of damages to health and the environment.

Benefits to financial institutions, EPA, and the facilities handling hazardous waste from increased options in providing financial assurances (RCRA § 3004), include the following:

This approach gives the facilities increased flexibility in meeting the financial requirements, by allowing them to select the one option most suited to their situation. As the trust fund will be completely funded by the owner or operator of the hazardous waste facility, he can obtain a rate of return from investing this amount, which would not be possible otherwise. Those large companies whose financial condition is such that they do not have to fully collateralize their surety bonds or letters of credit will merely have to pay an annual fee (representing about 1

to 5 percent of the fully collateralized amount) and can invest the rest.

To help all these facilities, their financial institutions, and EPA itself, we have designed standard forms for each of these options. This will reduce the reporting and recordkeeping burden on the facilities, enable their financial institutions to process their requests for financial assurance more expeditiously, and reduce the staff time EPA needs to monitor the process and gather the information it needs.

Summary of Costs

Sectors Affected: All industries generating hazardous waste, especially manufacturing; consumers of goods manufactured by these industries; public and private waste management; and Federal, State, and local governments.

Although these regulations affect most industries throughout the country, the Agency focused its Economic Impact Analysis (EIA) on major hazardous waste generating segments within the following industries: textile mill products, industrial inorganic chemicals, plastic materials, drugs, paints, industrial organic chemicals, explosives, agricultural chemicals (including pesticides), petroleum refining, lubricating oil and greases, rubber products, leather tanning and finishing, primary metal industries, plating and polishing of metals, special industrial machinery, electronic components, and batteries. Eight sectors are likely to experience some plant closures and job losses. These sectors include electroplating; wool fabric dyeing and finishing; mercury cell chlorine; leather finishing; mercury smelting and refining; and secondary copper, secondary lead, and secondary aluminum smelting. Overall, we do not find substantial price increases resulting from the regulation of products from these industries, except for projected price increases for electroplating job shops (6.6 percent) and cattlehide non-chrome tanneries (1 to 3 percent).

The estimated annual compliance cost attributed to the Interim Status Standards part of the Phase I RCRA hazardous waste regulations is \$510 million. Of this, \$303 million (1979 dollars) is associated with closure/post-closure liability requirements, \$57 million is attributable to treatment and disposal, and \$15 million is associated with recordkeeping and reporting. Monitoring and testing, administration, training, and contingency planning account for the remaining \$135 million. The total annual cost represents less than 0.2 percent of the annual value of

sales for those affected industries examined.

The regulations will also affect the public and private hazardous waste management industry. In all, some 380,000 generators, transporters, treaters, storers, and disposers of hazardous wastes will be brought into the regulatory program. The affected industrial segments will probably pass on the increased costs to the public, resulting in a nominal increase in prices of selected consumer items.

Industries which presently dispose of hazardous waste at their own facilities may begin to ship their waste to off-site facilities rather than incur the costs of upgrading their disposal facilities to comply with the regulations. This is likely to cause a short-run shortage of disposal capacity, increasing the demand for new sites. This capacity shortage and the rigorous standards for facilities may result in a nominal increase in the cost of disposal.

We estimate the governmental costs associated with implementation and maintenance of the hazardous waste management program at \$20 million to \$35 million per year (1979 dollars) 1979 dollars. We currently estimate that 39 States and territories will assume the program while EPA operates a Federal program in the remaining 17, by January 1982.

Because Texas, Ohio, Pennsylvania, Louisiana, Michigan, Indiana, Illinois, Tennessee, West Virginia, and California generate 65 percent of all hazardous waste produced nationally, these States will probably be affected to a greater degree than others.

Related Regulations and Actions

Internal: Proposed and final rules linked with RCRA §§ 3001, 3002, and 3004 in creating the RCRA Subtitle C regulatory framework are:

(1) Authorization of State Hazardous Waste Programs; Advance Notice of Final Regulation, 45 FR 6752, January 29, 1980.

(2) Notification of Hazardous Waste Activity; Public Notice, 45 FR 12746, February 26, 1980.

(3) Standards for Transporters of Hazardous Waste; Final Rule, 45 FR 33150, May 19, 1980.

(4) Final Consolidated Permit Regulations, 45 FR 33290; and Consolidated Permit Application Form, 45 FR 33516, May 19, 1980 (final rule and application forms, respectively).

On August 19, 1980, EPA announced a notice of its intent to issue amendments to, interpretations of, and answers to questions on its February 26, and May 19, 1980, hazardous waste regulations in 45 FR 55386.

EPA issued rules regarding the disposal of polychlorinated biphenyls (PCBs) under the Toxic Substances Control Act, § 6(e), 15 U.S.C. § 2605. Regulations issued under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 135 *et seq.*) address the disposal of pesticides and pesticide containers. Rules under the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. § 1401 *et seq.*) control incineration or dumping of hazardous waste at sea.

External: The Department of Transportation (DOT) has developed hazardous materials transportation regulations (49 CFR Parts 171-173 and 178-179) controlling containerization and labeling of waste by generators using transporters engaged in interstate or foreign commerce. EPA published the final rule, Standards Applicable to Transporters of Hazardous Waste, in 45 FR 12737, February 26, 1980. This incorporated DOT's rules on labeling, marking, packaging, placarding, and discharge reporting.

DOT, in its final rule of May 22, 1980, 45 FR 34560, incorporated EPA's manifest requirements and expanded its list of hazardous materials to include hazardous wastes which require a manifest. Through implementation of certain record-handling requirements, this regulation ensures that these wastes are delivered to predetermined, designated facilities. DOT's regulation applies to inter- and intrastate transportation of hazardous wastes.

Active Government Collaboration

The Department of Defense, Occupational Safety and Health Administration, Department of Energy, Food and Drug Administration, Soil Conservation Service, Water Resources Council, the Center for Disease Control of the Department of Health and Human Services, Department of Transportation, and the Interstate Commerce Commission cooperated with EPA during development of the regulations.

Timetable

Those hazardous waste regulations promulgated on July 16, 1980 will become effective January 16, 1981.

Available Documents

Phase II Final Rules—Those wastes proposed as hazardous on July 16, 1980, the RCRA § 3001 Interim Final Rules issued May 19, 1980, and RCRA § 3004 Technical Standards and financial requirements for owners and operators of hazardous waste management facilities, were finalized November 19, 1980.

Phase I Final Rules—Regulations affecting hazardous waste generators became effective November 19, 1980. Regulations for identification and listing of hazardous waste promulgated on May 19, 1980 became effective November 19, 1980. Regulations promulgated May 19, 1980 affecting owners or operators of hazardous waste treatment, storage, or disposal facilities became effective November 19, 1980.

Advance Notice of Final Rule, 45 FR 6752, January 29, 1980.

Public Notice, 45 FR 12746, February 26, 1980.

Final Rule, 45 FR 12722, February 26, 1980.

Final Rule, Interim Final Rule, 45 FR 33084, May 19, 1980.

Proposed Rule, 45 FR 33136, May 19, 1980.

Final Rule, 45 FR 33140, May 19, 1980.

Final Rule, Interim Final Rule, 45 FR 33154, May 19, 1980.

Revision of Proposed Rule, 45 FR 33260, May 19, 1980.

Interim Final Rule, 45 FR 47832, July 16, 1980.

Proposed Rule, 45 FR 47835, July 16, 1980.

The EPA Office of Solid Waste Docket (Room 2711, EPA, 401 M Street, S.W., Washington, DC 20460) maintains the following documents for public review:

- Background documents for interim status standards
- Final background documents
- Resource Requirements Summary
- Regulatory Analysis
- Public comments
- Summaries of ex parte contacts
- Public hearing transcripts
- Studies and reports on hazardous waste and hazardous waste management
- References for background documents

Copies of the following documents are also available from Edward Cox, Solid Waste Information Office, 26 West St. Clair, Cincinnati, OH 45260:

- Draft Environmental Impact Analysis
- Draft Integrated Impact Assessment of Hazardous Waste Management Regulations
- Studies and reports on hazardous wastes and hazardous waste management

Agency Contact

Criteria for Identifying and Listing Hazardous Waste (RCRA § 3001):
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 Standards Applicable to Generators of Hazardous Waste (RCRA § 3002).
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 Office of Solid Waste (WH-563)
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 Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (RCRA § 3004):
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EPA—OWWM

Sewage Sludge Disposal Regulations (40 CFR Part 258)

Legal Authority

Clean Water Act, § 405(d), 33 U.S.C. § 1345.

Reason for Including This Entry

These regulations are important because they will provide requirements for the disposal and use of wastewater treatment plant sludge. Initial regulations will include requirements for the landspreading of sludge as well as for the distribution and marketing of fertilizers and soil conditioners derived from sludge. Ultimately, the impact on the regulated community of all the sewage sludge disposal regulations is expected to exceed \$100 million total cost.

Statement of Problem

The Environmental Protection Agency (EPA) estimates that approximately 5 million dry tons of municipal sewage sludge from publicly owned treatment works (POTWs) alone are generated annually in the United States. Sewage sludge is a broad term for the solids removed from wastewater as it goes through a municipal treatment plant and is cleaned up for discharge. Sludge can be disposed of—or used—in a liquid form or it can be concentrated by dewatering processes. These can be mechanical, heat drying, or outdoor drying beds or lagoons. The end product can be a liquid, a thick slurry, a wet cake, a dry cake, a compost product, or a dried powder. The end product needs to be regulated to prevent its

uncontrolled or indiscriminate use, which could lead to potential environmental and public health problems. Documented cases of damage incidents indicate that some of the sludge-based fertilizer and soil conditioner products have been found to contain potentially harmful levels of heavy metals, toxic organics, and pathogens.

Sludge volume is expected to double in the next 10 years, due to an increase in the volume of sewage to be treated and the implementation of advanced wastewater treatment systems, which will treat such wastewater more completely. Currently, the major disposal methods of sewage sludge are landspreading (31 percent), landfilling (24 percent), incineration (21 percent), and ocean disposal (18 percent). Composted sludge is produced by adding wood chips or other organic refuse to dewatered sludge to produce a humus-like material with soil-conditioning and nutrient value. When composted properly, this material is essentially odorless and pathogen-free. Over the years, EPA has issued several regulations protecting single environmental media, such as air, water, or land, from degradation. In the area of sludge disposal, this sequential, rather than comprehensive approach, has often resulted in shifting the problem from one environmental medium to another (e.g., from the ocean to land). A comprehensive approach will enable risk assessment to be conducted across all environmental media, rather than transferring risk from one medium to another.

Alternatives Under Consideration

As mentioned above, EPA believes that promulgation of a comprehensive regulation will be preferable to assorted or no regulations. Therefore, EPA is considering a new approach by incorporating all regulations affecting sewage sludge disposal into a comprehensive sludge management regulation. The most important beneficial result of this approach would be to encourage a complete environmental and economic assessment of sludge management alternatives at the local level. Other benefits will include an easier understanding of sludge disposal requirements by the public and better coordination of sludge management programs at the State and local levels.

Since complete issuance of a comprehensive sewage sludge regulation would take several years, EPA intends to develop these regulations in a phased program. This allows the Agency to both address the

various methods of sewage sludge disposal according to perceived priorities and to expand the scientific data base.

All land disposal of non-hazardous sludges, which includes landfilling, disposal in surface impoundments, and landspreading (both on food-chain crop land and non-food-chain land; food-chain crop land is used for growing crops for direct human consumption or for feeding animals whose products will be used for direct human consumption; non-food-chain land is that land used for other purposes and which does not contribute to the human food chain) is currently regulated by the requirements of the "Criteria for Classification of Solid Waste Disposal Facilities and Practices," 44 FR 53438, issued on September 13, 1979 (the Criteria). These regulations were issued by EPA under authority of the Resource Conservation and Recovery Act (RCRA) Subtitle D and the Clean Water Act (CWA) § 405. The next regulatory proposal will include an amendment to the Criteria by specifying certain recordkeeping requirements for the land application of sewage sludge.

EPA expects to propose regulations for the distribution and marketing of sludge products under its sewage sludge disposal regulations in December 1980 and to finalize them in December 1981. Distribution and marketing of sludge-derived fertilizers and soil conditioners is the next candidate for regulation because EPA perceives an immediate need in this area for several reasons. First, the land application of sludge products is currently unregulated except in a few States. Second, use of this method is expected to increase as ocean disposal is being phased out as an alternative, thus increasing the health hazards as the amount of heavy metals, toxic organics, and pathogens in the soil is increased.

We will reserve several other parts of the comprehensive sewage sludge regulations for future completion and will incorporate and update some of the regulations described below under "Related Regulations and Actions." These may include landfilling, incineration, surface impoundments, thermal processing, and ocean disposal. EPA does not yet have a timetable for completion of these parts of the regulations.

Summary of Benefits

Sectors Affected: Public and privately owned sewerage systems; EPA; State and local governments; manufacturing and distributing of fertilizers and soil conditioners derived from sludge; and the general public.

Although the costs of these regulations are not known at present, EPA feels that the benefits to be gained are important enough to justify writing these regulations. The Agency will discuss the benefits and costs more fully in its Regulatory Analysis, which will be completed at the time of the proposal for the distribution and marketing regulations. Benefits include aiding the State and local governments to select the most effective sludge management approach for their individual situations, promoting better coordination of sludge management programs among jurisdictions within a regional area (such as would be needed for the Potomac River, which travels through Maryland, Virginia, and the District of Columbia), and providing the public and the sludge disposal organizations (both private and public) with advice on the safe and proper methods for disposing of sewage sludge. Documented cases of damage incidents indicate the potential environmental and public health problems relating to the uncontrolled or indiscriminate use of sludge-based fertilizer and soil conditioner products. Although some of these products have been found to contain potentially harmful levels of heavy metals, toxic organics, and pathogens, they are often distributed and marketed without the public knowing about their chemical or biological constituents or the proper manner of application to the soil. Over time, repeated application of such products can result in accumulation of contaminants in the soil, which will affect future use of the site.

We are preparing an Environmental Impact Statement/Economic Impact Analysis at the present time; it will be completed at the time of the proposal for the distribution and marketing regulations.

Summary of Costs

Sectors Affected: EPA; State and local governments; and public and privately owned sewerage systems.

As mentioned in "Summary of Benefits," the Agency will address the costs fully in its upcoming Regulatory Analysis.

Related Regulations and Actions

Internal: Of the incineration methods of sewage sludge disposal, both new stationary sources or air emissions and hazardous pollutants are regulated by the Clean Air Act (CAA). Polychlorinated biphenyls (PCBs) are regulated by the Toxic Substances Control Act (TSCA), and hazardous wastes by RCRA Subtitle C. Ocean dumping is regulated by the Marine

Protection, Research and Sanctuaries Act (MPRSA).

External: None.

Active Government Collaboration

In developing the pre-proposal and the proposal drafts of the distributing and marketing of sewage sludge, EPA is working with the Food and Drug Administration, the Consumer Product Safety Commission, and the U.S. Department of Agriculture.

Timetable

NPRM—January 1981.

Draft Regulatory Analysis—Same date as the NPRM.

Environmental Impact Statement/Economic Impact Analysis—Same date as the NPRM.

Public Hearings—Three to five will be held in various cities nationwide shortly after the NPRM.

Public Comment Period—60 days after the NPRM.

Final Rule—January 1982.

Final Regulatory Analysis—Same date as the final regulation.

Final Rule Effective—30 days after the final rule is published.

Available Documents

Final Rule for air emission and hazardous pollutants is in 40 FR 46259, October 6, 1975 and 40 FR 48302, October 14, 1975.

Final Rule for ocean dumping is in 42 FR 2462, January 11, 1977.

Final, Interim Final, and Proposed Rules for the Criteria for classification of solid waste disposal facilities and practices are in 44 FR 53438, September 13, 1979.

Final Rule for polychlorinated biphenyls is in 44 FR 31514, May 31, 1979.

Final, Interim Final, and Proposed Rules for hazardous waste are in 45 FR 33066, May 19, 1980.

Pre-proposal draft of the distribution and marketing of sewage sludge, May 6, 1980. Available free from the Public Information & Participation Branch, U.S. EPA, Office of Solid Waste (WH-562), 401 M Street, S.W., Washington, DC 20460.

Public comments concerning sludge requirements contained in the Criteria and the pre-proposal draft of the distribution and marketing of sewage sludge are available for review in the Solid Waste Docket, Room 2711A, U.S. EPA, Office of Solid Waste (WH-562), 401 M Street, S.W., Washington, DC 20460.

After the regulation is proposed, background documents and the Environmental Impact Statement/Economic Impact Analysis will be

available for review in the Solid Waste Docket at the above address.

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FEDERAL EMERGENCY MANAGEMENT AGENCY

Review and Approval of State and Local Radiological Emergency Plans and Preparedness (44 CFR Part 350)

Legal Authority

Disaster Relief Act of 1974, as amended 42 U.S.C. § 5121; Federal Civil Defense Act of 1950, as amended, 50 U.S.C. App. § 2251 *et seq.*, Executive Order 12148 of July 20, 1979, as amended 44 FR 43239.

Reason for Including This Entry

The Federal Emergency Management Agency (FEMA) includes these regulations because of the great interest of the public in planning for safety around nuclear power plants. These procedures describe how State and local governments can obtain FEMA evaluation, assessment, findings, and determinations as to the adequacy of State and local plans and preparedness to cope with the offsite effects of a radiological emergency at nuclear power plants.

Statement of Problem

The President's Commission on the Accident at Three Mile Island (known as the Kemeny Commission), the General Accounting Office, Congressional Committees, and others have all concluded that State and local plans and preparedness are inadequate to cope with the offsite effects of an emergency resulting from accidental emission of radiation at a nuclear power plant. The President has taken a number of actions as a consequence of recommendations on means to improve this situation.

Forty States have populations within 10 miles of the 73 nuclear power plants that are licensed to operate, the 88 under construction, and the 66 planned. While a significant number of States have either completed or will shortly complete their plans, considerably more needs to be done to achieve the proper preparedness.

Specifically, the President directed the Federal Emergency Management Agency to take the lead in offsite emergency planning and response. This means planning for action taken outside the plant to deal with consequences affecting the public away from the plant. FEMA also is to review State plans in those States with nuclear power facilities either in operation or scheduled for operation in the near future. FEMA, in order to implement this assignment, entered into a Memorandum of Understanding with the Nuclear Regulatory Commission, which has the responsibility for licensing nuclear power plants. NRC, however, has no authority to specify the emergency planning responsibilities of State and local governments. Under the Memorandum, FEMA has agreed to make findings and determinations as to whether State and local plans are adequate and capable of implementation (e.g., adequacy and maintenance of procedures, training, resources, staffing levels, and qualifications and equipment adequacy).

The NRC recently has issued new emergency planning regulations which will be effective November 3, 1980. These were published August 19, 1980 (45 FR 55402). Under the NRC rule, in order for a plant to continue operations or to receive an operating license, the plant will be required to submit its emergency plans, as well as State and local government emergency response plans, to NRC. The NRC will then make a finding as to whether the state of onsite and offsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. The NRC will base its finding on a review of the FEMA findings and determinations as to whether State and local emergency plans are adequate and capable of being implemented and on the NRC assessment as to whether the emergency plans for the nuclear plant itself are adequate and capable of being implemented. These issues may be raised in NRC operating license hearings, but a FEMA finding will constitute a rebuttable presumption on the question of adequacy.

Alternatives Under Consideration

The FEMA-proposed rule provides for a formal process for evaluation, review, and approval by FEMA of State plans and the local plans which are submitted to FEMA as annexes to the State plan and considered jointly with it. FEMA would also evaluate and assess the capabilities of State and local governments to implement the plans.

The process is voluntary; that is, there is no requirement in law that a State submit a plan to FEMA for review and approval. There is no FEMA sanction for failure to submit a plan. FEMA, which offers grants to State and local agencies to support civil defense and disaster preparedness planning, has not made submission of radiological emergency plans and preparedness a condition for making these other grants.

The FEMA-proposed rule also calls for a public meeting at which the State, utility, and FEMA would explain the plan and for an exercise at which the plan is tested. Both of these requirements are conditions for approval. The findings and determinations are based on performance standards rather than adherence to detailed criteria.

Alternatives would include deletion of one or all of the above features. For example, as one Governor suggested, the review process could be established without a rule, without an exercise or public meeting, and without public involvement at all. A number of commentators on the proposed rule believe the public meeting is unnecessary. FEMA believes such a meeting is extremely important in informing the public and thus obtaining its support for whatever decisions may be made.

Summary of Benefits

Sectors Affected: State and local governments; NRC; nuclear power facilities; and the general public.

The benefits to be obtained from these procedures are those of an orderly process by which States can obtain evaluation and review of their plans and preparedness to cope with the away-from-the-plant consequences of a radiological accident at a nuclear power plant. The Nuclear Regulatory Commission is conditioning licensing of nuclear power plants on, among other things, the adequacy of State or local measures to be taken offsite in event of a radiological emergency. The NRC does not have jurisdiction to require a State or locality to develop or submit a plan. It does have jurisdiction to require a nuclear power plant licensed by NRC to submit, as data, information (the State and local plans) about the adequacy of State and local preparedness to cope with the effects of an accident. NRC, by its rules, will rely in its licensing proceedings on FEMA findings and determinations on the adequacy for health and safety purposes of the plans and preparedness. FEMA is the expert Federal agency on State and local plans and preparedness to respond to emergencies of all types.

The FEMA procedure is justified on its own terms as a process for review and approval of State and local plans to cope with a special type of emergency, and the procedure thus exists independent of NRC licensing hearings and is usable even if not tied to a licensing hearing.

The State and local governments benefit because the procedure is related to other emergency preparedness response plans and allows them to deal with a single Federal agency on this subject rather than dealing with many agencies. It further assures an independent, carefully considered review and evaluation of their plans.

Nuclear power facilities also benefit because they will know that FEMA's findings and determinations are the product of a comprehensive, impartial, and independent review process.

The general public also benefits because it knows that the process calls for review and approval of plans and preparedness, based on established performance standards; and it can directly participate by attending the public meeting where it can comment. The various notices and the meeting keep the public informed. Advance planning may result in reduced public expenditures in dealing with emergencies.

Summary of Costs

Sectors Affected: FEMA; State and local governments; nuclear power plants; and users of electricity produced by nuclear power.

We have not prepared a Regulatory Analysis. The procedure itself does not require any expenditure of large amounts of funds. That is to say, submission of a plan is voluntary and the process by which FEMA determines whether or not it can approve the plan involves staff time on the part of Federal agencies, such as the Departments of Energy, Health and Human Services, Commerce, and Agriculture, and the Environmental Protection Agency, States and local governments and the utilities. The conduct of an exercise, and the holding of a public hearing do have cost impact on the aforementioned agencies.

What may have a small cost impact are actions which a State or local government may need to take in order that its plans and preparedness can be found adequate. According to studies, typical costs to a State or local government to prepare a plan for a single facility can be approximately \$360,000 initially and \$74,000 yearly to update plans. It may well be that these costs can be passed to the utilities, and perhaps to the consumer. Costs might

include communications equipment, radiation monitoring equipment, exercises, training, etc. However, the total cost is going to be minute when compared to a total investment in a nuclear plant, which will be in the hundreds of millions of dollars. Who bears the cost is a matter of State and local law. In some cases, the utilities are charged for State and local costs. In some, the utilities may volunteer to pay.

Related Regulations and Actions

Internal: FEMA has developed, pursuant to a Presidential assignment, interagency assignments which replace a description of assignments set out in a Notice published in the Federal Register on December 24, 1975 (40 FR 59494). These new assignments were published on October 22, 1980 (45 FR 69904). See also the discussion under External actions.

External: FEMA and Nuclear Regulatory Commission (NRC) have jointly issued "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants", NUREG-0654/FEMA-REP-1. This guidance and acceptance criteria provides a basis for NRC licensees and State and local governments to develop radiological emergency plans and improve emergency preparedness associated with nuclear power facilities. The document combines guidance to State and local governments with guidance to the NRC and supersedes previous guidance and criteria published by FEMA and NRC. It is intended for use by Federal officials in reviewing and assessing the adequacy of State, local, and nuclear power facility operator emergency plans and preparedness. FEMA-REP-1/NUREG 0654 contains a series of planning standards which will be a part of the FEMA rule. It lists specific criteria for the planning and preparedness activities of State and local governments as well as the licensees of NRC. NRC and FEMA currently are revising the document as a result of public comment submitted pursuant to a Notice published on February 13, 1980 (45 FR 9768). We intend that the FEMA rule will set the same standards and criteria as the new NRC rule discussed in "Statement of Problem." Thus, both FEMA reviewers and NRC reviewers will be using the same criteria and standards.

Active Government Collaboration

We are closely coordinating this rulemaking with the Nuclear Regulatory Commission (NRC), which has formally commented on it. We furnish the

findings and determinations with respect to adequacy of State plans and preparedness, which are a product of this procedure, to NRC.

FEMA will use the expertise of several Federal agencies in making its findings and determinations. The manner in which we will accomplish this is set out at 45 FR 69904, which was prepared in collaboration with other agencies.

Timetable

Final Rule—Not yet scheduled.

Final Rule Effective—30 days after adoption.

Regulatory Analysis—None.

Available Documents

NPRM—45 FR 42341, June 24, 1980.

Memorandum of Understanding between NRC and FEMA to accomplish a prompt improvement in radiological emergency planning and preparedness; 45 FR 5847, January 24, 1980.

FEMA-REP-1, NUREG-0654: Criteria for Preparation and Evaluation of Radiological Emergency Plans and Preparedness in Support of Nuclear Power Plants (now under revision jointly with NRC).

Copies of the above documents are available from the Agency Contact listed below.

Public Comments: Copies are available for review at FEMA, Rules Docket Clerk, Room 801, 1725 I Street, N.W., Washington, DC 20472.

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CONSUMER PRODUCT SAFETY COMMISSION

Chronic Hazards Associated With Benzidine Congener Dyes in Consumer Dye Products

Legal Authority

Consumer Product Safety Act, 15 U.S.C. § 2051 *et seq.*

Reason for Including This Entry

The Consumer Product Safety Commission (CPSC) believes this is an issue of considerable public interest due to the possibility of adverse health effects which can result from consumer exposure to benzidine dyes, o-tolidine dyes, and o-dianisidine dyes and the significant number of consumers that may be exposed to them.

Statement of Problem

Benzidine and two related chemicals (congeners) o-tolidine and o-dianisidine, constitute a family of synthetic aromatic amines used as intermediates in the synthesis of more than 400 direct benzidine congener dyes.

In 1972, the International Agency for Research on Cancer (IARC) concluded that benzidine is carcinogenic in several species of animals, and that "epidemiologic studies showed that occupational exposure to commercial benzidine alone was strongly associated with bladder cancer." Both the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) have issued regulations for benzidine based on the determination of its carcinogenicity. In 1978, the National Cancer Institute (NCI) reported that three benzidine dyes produced tumors in rats. Although it has not been conclusively shown that o-tolidine and o-dianisidine are human carcinogens, there is animal evidence demonstrating carcinogenicity. In addition, evidence indicates that dyes based on benzidine, o-tolidine, and o-dianisidine may be metabolically converted to their respective parent compounds in the body. These studies cause the staff of the CPSC to believe that benzidine dyes, o-tolidine dyes, and o-dianisidine dyes may present substantial health hazards to consumers.

Consumer exposure to these dyes may occur from the use of packaged consumer dyes in homes, schools, and arts and crafts processes. In addition to the consumer market, benzidine dyes, o-tolidine dyes, and o-dianisidine dyes are used industrially in the manufacture of consumer products. For example, it is estimated that 40 percent of all benzidine dyes produced are used to dye paper goods such as tissues, paper towels and stationery; 25 percent are applied to textiles; and 15 percent are used in dyeing leather products.

The consumer dyes market can be divided into two segments: the mass-marketed dye market, consisting of consumer dye products sold at various retail outlets to the general public for home dyeing applications, and the market for specialty dye products sold as arts and crafts materials. Consumer dyes are purchased by the general public from retail stores; their major use is in home fabric dyeing because these dye products are specifically formulated for ease of application and affinity for cotton and rayon fibers. Artists use the consumer dyes for home crafts, teaching workshops, textile printing, and in the production craft items for resale on a

limited basis. Children may be exposed to benzidine congener dyes during arts and crafts applications in school projects. A danger to consumers arises from the possibility that benzidine congener dyes or their decomposition products may enter the human system by skin absorption. In addition, dry dust powders may enter the human system by inhalation and ingestion. It is possible, despite precautions, for even an experienced artist to contact dye solution on some part of the body during dyeing operations.

Sources estimate that about 30 million packages of consumer dye products are sold annually. Using 65 cents as an average unit price, it is estimated that the retail market for home dyes falls between \$15 million and \$18 million.

The three major home dye manufacturers have indicated that since 1978 they have not used benzidine dyes in consumer dye products. However, field studies conducted by the CPSC have demonstrated that general retail outlets still sell older dye packages, manufactured at a time when industry used benzidine dyes.

Although benzidine dyes no longer may be produced for sale to the general public, arts and crafts people are able to purchase them directly from manufacturers or retail dye outlets. Often these dyes are industrial dyes which have been repackaged for arts and crafts use. It is estimated that 100 to 500 pounds of benzidine dyes are sold annually to between 1,000 and 4,000 consumers for arts and crafts applications.

Substitutes used for benzidine dyes in consumer dye products may be based on o-tolidine or o-dianisidine. About nine different o-tolidine dyes and o-dianisidine dyes are currently used in consumer dye products. Of approximately 30 million packages sold annually, estimates place the range of packaged dye products containing o-dianisidine dyes or o-tolidine dyes between 15 and 21 million, encompassing as much as 60 to 70 percent of the home dye market.

In response to a petition jointly submitted in October 1978 by the Center for Occupational Hazards, the Artist-Craftsmen of New York, the Foundation for the Community Artists, and the Surface Design Association, the CPSC is considering the need to take regulatory action with respect to benzidine congener dyes in consumer dye products.

Alternatives Under Consideration

The Commission currently is considering the following three regulatory alternatives in response to a

petition requesting a ban of benzidine dyes, o-tolidine dyes, and o-dianisidine dyes in consumer dye products. The staff has recommended alternative (A) to the Commission.

(A) Commence a proceeding to ban benzidine dyes, o-tolidine dyes, and o-dianisidine dyes in consumer dye products. This action would eliminate the risk of consumer exposure to benzidine congener dyes in consumer dye products. Considering the estimate that o-tolidine dyes and o-dianisidine dyes may be represented in 60 to 70 percent of the formulations presently used by the consumer dye industry, the economic impact of a ban on these dyes may be considerable.

(B) Commence a proceeding to ban benzidine dyes in consumer dye products and do not take immediate action on o-tolidine dyes and o-dianisidine dyes.

The economic impact of a ban on benzidine dyes on the consumer dye industry is expected to be minimal. Deferred action on o-tolidine dyes and o-dianisidine dyes pending further study of substitutes and reformulation may cause less market disruption.

Although the consumer dye industry has indicated that benzidine dyes are no longer being used, a Commission survey revealed that consumer dye products containing benzidine dyes are still available at retail stores. Therefore, if this alternative is chosen, a recall of consumer dye products containing benzidine dyes may also be considered. CPSC staff plans to gather information from consumer dye manufacturers concerning the feasibility of a recall.

(C) Deny the petition. The Commission may decide to take no action with respect to benzidine dyes, o-tolidine dyes, and o-dianisidine dyes in consumer dye products. This alternative would permit continued consumer exposure to benzidine congener dyes.

To date, the CPSC staff's primary concern has been with home dye packages containing benzidine dyes, o-tolidine dyes, or o-dianisidine dyes sold directly to consumers. The Commission staff plans to investigate the commercial use of benzidine congener dyes in textiles. There is a possibility that the staff will recommend to the Commission further action in the future with respect to those products that have been dyed commercially with benzidine congener dyes.

Summary of Benefits

Sectors Affected: General consumers, craftspeople, and hobbyists.

Benzidine congener dyes are used in packaged consumer dye products. Evidence indicates that these dyes may

be potential carcinogens. Consumers may be exposed to these dyes by inhalation, skin absorption, or ingestion during the home dyeing process. The Commission will be considering possible regulation of benzidine congener dyes in consumer dye products to reduce exposure to potential carcinogens. The staff has recommended a ban of consumer dye products containing benzidine dyes, o-tolidine dyes, and o-dianisidine dyes.

Summary of Costs

Sectors Affected: General consumers, craftspeople and hobbyists; and dye manufacturers.

The consideration of substitute dyes to replace benzidine congener dyes is of great concern to the Commission staff; substitution of noncarcinogenic dyes for those that present chronic health effects is essential. Current information indicates that substitutes for o-tolidine dyes, and o-dianisidine dyes are generally available with the possible exception of a few colors.

If substitutes for these few colors cannot be readily identified or developed for consumer dye products, a search for substitutes not based on benzidine or its congeners could involve virtually hundreds of other organic compounds and, because the entire dye formulation may need to be adjusted, there could be substantial costs to industry. Reformulations have not yet been developed and therefore no overall estimates of substitution costs are available. However, information currently available to the CPSC staff suggests that the cost of dye ingredients may not be the predominant cost element that determines the retail price of consumer dyes. If substitution were to occur, costs for labor, packaging, distribution, and advertising, which may be the primary price determinants, may not vary greatly from present costs.

If a recall were to occur of products containing benzidine dyes, the lack of ingredient listings on dye containers may make it difficult for retailers to identify which dye products contain benzidine dyes.

Should the price of commercial dyes increase, an indirect cost may be felt by artists and craftspeople. If manufacturers pay higher prices for raw materials, greater overhead costs and possible smaller profit margins could result for artists.

The CPSC staff is considering, at the present time, only the need for controls of consumer dye products; however, if later action is considered against the other uses of benzidine congener dyes in consumer products, the Commission will investigate the potential economic

impacts on those products that have been colored with benzidine dyes, o-tolidine dyes, and o-dianisidine dyes.

Related Regulations and Actions

Internal: At the present time the CPSC is supporting research on the breakdown of benzidine congener dyes in the body and on the long and short term economic effects of various regulatory alternatives on consumers and the consumer dye industry. A hazard assessment for textile and non-textile uses of benzidine dyes, o-tolidine dyes, and o-dianisidine dyes will be completed in Summer 1981.

External: The Occupational Safety and Health Administration (OSHA) recently released a field directive on the carcinogenicity of three benzidine dyes which recommends that other benzidine dyes also be handled as carcinogens.

The National Institute for Occupational Safety and Health (NIOSH) published the "Special Hazard Review of Benzidine Based Dyes" which recommends that these dyes should be recognized as potential human carcinogens and that the benzidine congener dyes be handled with extreme care.

OSHA and NIOSH jointly released a Health Hazard Alert for benzidine dyes, o-tolidine dyes, and o-dianisidine dyes which concludes that benzidine dyes are carcinogenic, and states that o-tolidine dyes and o-dianisidine dyes may present a cancer risk to workers and should be handled with care.

The Environmental Protection Agency (EPA) has proposed a Toxic Substances Control Act (TSCA) § 8(a) rule, and is developing a TSCA § 8(d) rule to require manufacturers to submit specific information and health and safety studies for a variety of chemicals, including benzidine dyes.

Active Government Collaboration

The CPSC is working closely with the Interagency Regulatory Liaison Group (IRLG) Benzidine Congener Dyes Workgroup in determining the most effective statutes for possible controls on the use of benzidine dyes and benzidine congener dyes, and is investigating regulatory options.

The National Cancer Institute (NCI), National Institute of Occupational Safety and Health (NIOSH), the Stanford Research Institute, Consumer Product Safety Commission (CPSC), Occupational Safety and Health Administration (OSHA), and the Environmental Protection Agency (EPA) plan to meet periodically with the Dyes Environmental and Toxicology Organization (DETO) to perform a systematic study of dyes and to recommend dyes to the National

Toxicology Program (NTP) for carcinogenicity testing.

Timetable

Commission Decision to grant or deny petition—October 29, 1980.

Regulatory Analysis—The Commission, as an independent agency, is not required to prepare a Regulatory Analysis as defined under E.O. 12044. However, the Commission prepares essentially the same information in its rulemaking proceedings.

Available Documents

"CPSC Staff Briefing Packages" dated February 26, 1979 and September 24, 1980 are available from the Office of the Secretary, 1111 18th St., N. W., U.S. Consumer Product Safety Commission, Washington, DC 20207.

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CPSC

Chronic Hazards Associated With Formaldehyde

Legal Authority

Consumer Product Safety Act, 15 U.S.C. § 2051 *et seq.*; Federal Hazardous Substance Act, 15 U.S.C. § 1261 *et seq.*

Reason for Including This Entry

Formaldehyde in consumer products is of concern to the CPSC because use of these products may expose consumers to hazards.

Statement of Problem

Formaldehyde is a reactive chemical which is widely used in consumer and industrial applications. According to studies made by the CPSC, 16 U.S. companies currently produce formaldehyde. In 1978, total production was approximately 6.4 billion pounds and the value of formaldehyde was between \$285 million and \$350 million.

Chemical manufacturers use formaldehyde to produce over 20 intermediate chemicals. Formaldehyde's reactions with amino acids, proteins, and nucleic acids are important in yielding protein denaturants for use in leather tanning, as preservatives, and in the preparation of vaccines. It is widely used in the manufacture of phenolic, urea, and melamine resins. These resins are used in bonding particle board, in

laminating veneers and plywood, and as insulating materials, protective coatings, and special treatment for textiles and paper products.

The manufacture of urea formaldehyde resins and phenol formaldehyde resins accounts for 50 percent of the total formaldehyde production. Urea formaldehyde resins are used as adhesives for making particle board, medium-density fiberboard and interior plywood. The housing construction industry uses these materials extensively in the construction of new residential housing and fabrication of mobile homes. The construction industry also uses urea formaldehyde resins to produce a foam thermal insulation for residential and industrial construction.

Manufacturers of exterior plywood, fiberglass, and mineral wool insulation blankets use phenol formaldehyde resins as adhesives. Parts that are subject to high temperature and pressure are produced from phenol formaldehyde resin compounds.

The textile industry uses formaldehyde resins. The resins react with cellulosic fibers such as cotton and rayon to give the fabric a permanent structure such as that found in wash and wear or permanent press clothing. In addition to crease proofing, urea formaldehyde resins also serve the purpose of shrinkage control, stiffening, and fire retardance.

Additionally, about 150 million pounds of the formaldehyde produced annually (approximately 2.5 percent of total production) is used to make formalin, an aqueous solution containing 37 percent formaldehyde. Formalin is widely used as a biological specimen preservative and is also used in disinfectants, embalming fluid, leathers, and dyes.

Under certain conditions, such as high temperature and humidity, free formaldehyde is released from resinous products by diffusion, decomposition, or environmental degradation. Products known to release formaldehyde over a prolonged period include urea formaldehyde foam insulation, particle board, and plywood.

Formaldehyde is a strong irritant, and sensitizer which produces a variety of symptoms depending on the mode, duration, and concentration of exposure. Generally, short term exposure to formaldehyde vapor causes irritation of eye, nose, and throat and sometimes of the skin. Chronic change, especially those of the respiratory system, have been observed after long term exposure to formaldehyde vapor. Dermal exposure to formaldehyde solution causes irritation of the skin ("Chemical

Burn") and in certain persons may cause an allergic reaction. Persons whose skin or respiratory system has been sensitized to formaldehyde respond more severely to lower concentrations, and the symptoms may persist for some time or worsen after exposure.

Consumer exposure to formaldehyde can occur by ingestion of liquid formaldehyde, dermal contact with the liquid or with substances containing formaldehyde, or by inhalation of formaldehyde vapor.

Formaldehyde's adverse effects on the respiratory system are of particular concern to individuals who suffer from asthma or chronic obstructive lung disease or who are generally allergic to a variety of substances. These people may experience severe reactions when exposed to low concentrations of formaldehyde. Another group of great concern are those individuals who have become sensitized to the chemical because of repeated exposure and then respond in an exaggerated manner to subsequent exposures at low levels. Upon being exposed to formaldehyde, these sensitized people may exhibit a variety of symptoms ranging from dermatitis to severe asthmatic reactions.

In addition to the potential adverse safety and health effects described above, based on the acute toxic and sensitization aspects of formaldehyde, interested persons should be aware of the following information concerning the possible carcinogenic potential of formaldehyde. Preliminary test results from the Chemical Industry Institute of Toxicology (CIIT), a scientific organization supported by 36 U.S. chemical corporations, show that rats exposed to formaldehyde gas (15 ppm) developed squamous cell carcinomas of the nose beginning after 12 months of exposure.

Rats exposed to lower concentrations of formaldehyde and mice exposed to 15 ppm have not developed tumors to date. The Commission has, under the auspices of the National Toxicology Program, convened a panel of scientists from within the Federal Government. This panel will help assess the human health implications of this study and the health implications of exposure to formaldehyde. The findings of the panel are expected in November, 1980.

The Commission is awaiting the determinations of the panel and information on the extent of consumer exposure to formaldehyde released by plywood, particle board, textiles, and school laboratory use. No decision has yet been made as to how to proceed.

Alternatives Under Consideration

The CPSC staff is exploring the following alternatives:

(A) The Commission may determine that no further regulatory action is warranted.

(B) The Commission could decide to institute a ban on the use of formaldehyde in those consumer products where the Commission determines its use presents an unreasonable risk of injury to consumers and that there is no possible standard that would adequately protect the public. This approach would protect the public from further significant exposure to formaldehyde from consumer products. Through delayed effective dates and phase-out times the staff believes the industry could be provided sufficient time to develop the technology to adequately replace formaldehyde in certain products.

(C) The Commission may require manufacturers to inform consumers of possible adverse health effects from products that can release formaldehyde. For example, the Commission has already proposed a regulation (see Calendar entry on urea formaldehyde foam (UFF) insulation) that would require urea formaldehyde foam insulation manufacturers to provide certain performance and technical data to prospective purchasers. The Commission staff believes that the cost to industry would not be as great as from a direct ban. Consumers would continue to be exposed to formaldehyde through this type of action. However, those who are allergic or who have been sensitized would be able to take steps to limit their exposure.

(D) Another alternative would be for the Commission to develop mandatory standards regulating the manufacturing of consumer products containing formaldehyde or establishing a maximum amount which could be released. This could reduce consumer exposure but not eliminate it completely.

(E) The Commission could encourage industry to voluntarily reduce the use of formaldehyde in those products where release of formaldehyde gas and dermal contact cause consumer exposure. This option would allow industry to proceed on its own initiative to find substitutes for the use of formaldehyde in consumer products. Such a voluntary effort by industry would be evaluated by Commission staff at fixed time intervals to ensure effective and timely reduction of the risk. Combining the skills of the private sector with the Government regulatory process may result in effective consumer protection while minimizing costs to the consumers.

The Commission staff will also consider whether to recommend that the Commission issue an ANPRM. The ANPRM may be issued in the fall of 1980 and could describe CPSC's proposed regulatory approach to formaldehyde in consumer products and solicit public comment on that approach. The Commission would consider the comments in developing any further regulations or other remedial action to protect consumers. Information which the Commission would expect to receive includes whether it has chosen the most appropriate regulatory approach; whether there are additional health effects or studies which the Commission should consider; whether consumers are being exposed to formaldehyde from products in addition to those known by the Commission; the extent to which the use of formaldehyde in consumer products is essential; and how the Commission should evaluate the costs, availability, utility, or safety of substitutes.

Summary of Benefits

Sectors Affected: The general population, especially those individuals who are sensitized to formaldehyde or who suffer from respiratory illnesses or multiple allergies.

If formaldehyde is a human carcinogen, the primary benefit to be achieved by regulation would be to reduce consumer exposure to a carcinogenic substance. Regardless of the results of the carcinogenicity tests, reduction of exposure to formaldehyde would be particularly important for the sector of the population which is sensitized to formaldehyde (estimated to be 4.5 to 7.8 percent of the population). These sensitized persons may exhibit allergic dermatitis or mild to severe asthmatic reactions. Some sensitized individuals develop increasingly severe reactions upon continued exposure to formaldehyde. Those individuals who suffer from multiple allergies or respiratory diseases also exhibit serious physical effects from very low level exposures. Continued exposure for long periods can lead to chronic changes of the respiratory tract such as rhinitis and airway obstruction.

Summary of Costs

Sectors Affected: Producers and distributors of formaldehyde; manufacturing industries that regularly use formaldehyde in the production of their products, including paper and wood products, textiles, insulation; and users of these products, including the construction industry.

In those industries in which no known substitutes for formaldehyde exist, industry may be faced with research and development costs for substitutes and/or the development of new technologies. There may be significant costs to industry if the Commission decides to ban certain products containing formaldehyde. The impact may be less if the Commission developed mandatory or voluntary standards or if the Commission issued regulations requiring labeling of products or disclosure of information to consumers. However, there is a possibility that labeling or disclosure to consumers may result in a decline in product sales if consumers, upon being alerted to the presence and potential effects of formaldehyde decide not to purchase the product. Additionally, there may be associated costs to consumers, in price or decreased utility of substances. The CPSC is currently preparing an analysis of the economic impact on selected products of various regulatory approaches to formaldehyde use. These estimates will be available in Spring 1981.

Related Regulations and Actions

Internal: The CPSC has proposed a regulation requiring manufacturers of urea formaldehyde foam insulation to provide prospective purchasers with performance and technical information concerning the potential release of formaldehyde (45 FR 39434, June 10, 1980).

External: The Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH) have issued a joint current Intelligence Bulletin on occupational exposure to UFF.

The National Cancer Institute (NCI) is conducting an epidemiological study on the effects of formaldehyde on morticians.

The Department of Energy published interim final material and installation standards for UFF insulation on September 25, 1980 (45 FR 63786).

Active Government Collaboration

The CPSC is a member of the Interagency Regulatory Liaison Group (IRLG). The IRLG has established a Formaldehyde Work Group, which CPSC chairs. The IRLG agencies, especially the CPSC, are examining formaldehyde products and exposure when the chemical is released or "off gassed" from products manufactured from it.

The CPSC has convened, under the auspices of the National Toxicology Program, a panel of scientists selected from within the Federal Government to

assist in evaluating the results of epidemiologic, carcinogenic, teratogenic, and mutagenic tests on formaldehyde. The panel is attempting to assess the human health implications of exposure to formaldehyde from consumer products.

Timetable

Report on the Evaluation of Health Risks of Formaldehyde by Government Scientists—Fall 1980.

ANPRM on Formaldehyde in Consumer Products—Fall 1980.

Hazard evaluation and exposure assessment for textile uses—Summer 1981.

Hazard evaluation and exposure assessment for particle board, plywood, laboratory uses—Fall 1981.

Regulatory Analysis—The Commission, as an independent agency, is not required to prepare a Regulatory Analysis as defined under E.O. 12044. However, the Commission prepares essentially the same information in its rulemaking proceedings.

Available Documents

The staff briefing packages and all materials which the Commission has relevant to the investigation of formaldehyde in consumer products are available from the Office of the Secretary, U.S. Consumer Product Safety Commission, Third Floor, 1111 18th Street N.W., Washington, DC 20207.

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CPSC

Consumer Products Containing Asbestos (16 CFR Parts 1304* and 1305*)

Legal Authority

Consumer Product Safety Act, 15 U.S.C. § 2051 *et seq.*; Federal Hazardous Substance Act, 15 U.S.C. § 1261 *et seq.*

Reason for Including This Entry

Asbestos is a known human carcinogen used in a variety of products. The Consumer Product Safety Commission (CPSC) believes this to be an issue of great interest to the public because of serious potential health hazards that may be involved when consumers are exposed to inhalable asbestos fibers.

Statement of Problem

The Consumer Product Safety Commission (CPSC) is concerned that the presence of asbestos in consumer products under certain conditions may present a risk of cancer and respiratory disease to consumers. On the basis of present information, it appears that consumer products containing asbestos fibers can pose a health hazard if the products release asbestos fibers into the air which consumers can inhale.

CPSC, therefore, issued an ANPRM on asbestos in October 1979. The primary purpose of CPSC issuing the ANPRM was to begin a formal investigation of the use of asbestos in consumer products by identifying consumer products containing asbestos, and to discuss ways CPSC could act to protect the public from exposure to asbestos fibers in consumer products. CPSC could issue a standard or ban, concerning asbestos-containing products, require labeling of consumer products containing asbestos, encourage some form of voluntary action by industry, or take other action.

The CPSC staff has recently completed a review of the health effects of asbestos which causes the staff to believe that, under certain conditions, the presence of asbestos in consumer products may present a risk of cancer and respiratory disease. The health hazard occurs when asbestos fibers are released into the air and people inhale them. Inhaled asbestos fibers may become embedded in lung tissue and once embedded, they may remain there indefinitely. Asbestos fibers that are released from consumer products can remain in household air for long periods of time and may subject household members to a continuous risk of fiber inhalation.

Consumer products are one source of exposure to asbestos fibers; there are also a number of environmental sources. Therefore, consumer products must be viewed as part of a cumulative burden of asbestos exposure.

Asbestos released from consumer products poses several problems in the household. First, young children and infants are exposed. Second, asbestos fibers that consumer products release into the living space can remain there over long periods of time and may be subject to repeated cycles of settling and resuspension. The presence of asbestos fibers can thus pose an ongoing inhalation risk in the household. Third, unlike the workplace, where engineering control systems and protective clothing are available to minimize worker's exposure to asbestos, the home provides household members with little or no

protection from exposure to asbestos fibers released from consumer products.

We do not know exactly how many asbestos-containing products are available to the consumer; however, we estimate that hundreds of different types of consumer products contain asbestos in some form. Asbestos paper has been used in many consumer products, such as household appliances, as a thermal or electrical insulating barrier. Asbestos is also commonly used in household building products, such as roofing shingles and tile, to provide strength and stability.

In a *Calendar of Federal Regulations* entry published in May, 1980, the Commission stated its concern about consumer exposure to asbestos fibers. This *Calendar* statement on asbestos described an ANPRM issued in October, 1979 (44 FR 60057). The purpose of the ANPRM was to inform the public of the Commission's concern and to announce the initiation of a Commission investigation of asbestos in consumer products. The Commission is considering comments and information received in response to the ANPRM in determining regulatory options we might pursue.

One example of CPSC action on products containing asbestos is hairdryers. As a result of information indicating that certain hairdryers released asbestos fibers during use, CPSC asked the National Institute for Occupational Safety and Health (NIOSH) of the Department of Health and Human Services to conduct tests. The results showed that some hairdryers released asbestos fibers into the air stream and directly on the user's head during ordinary use; thus, any fibers the hairdryers emitted could potentially be inhaled.

As a result of negotiation between the Commission's staff and firms which share approximately 90 percent of the consumer hairdryer market, the firms agreed to cease production and distribution of hairdryers containing asbestos and to offer consumers some form of repair, replacement, or refund for hairdryers they currently own.

CPSC has approved a General Order to manufacturers (including importers) and private labelers of certain categories of consumer products to submit information on the use of asbestos in their products. The general order is currently undergoing review by the General Accounting Office for compliance with the Federal Reports Act. CPSC staff will examine the information in response to the order to help identify specific products containing asbestos, to determine how the asbestos is used in the products, and

to analyze the use of possible substitute materials in a variety of applications. The CPSC staff review of this information will also aid in evaluating the impact of possible regulation on the cost, availability, and utility of the products.

The staff is concentrating its evaluation on certain types of products. We will focus initial action on products which show definite fiber release. We may make subsequent efforts to investigate other products which contain asbestos.

As we acquire testing and product information from the General Order and other sources identify other asbestos-containing products which may be of concern, we may institute other in-depth reporting requirements.

Alternatives Under Consideration

(A) On the basis of health research and economic studies, the Commission stated in its ANPRM that it may consider the elimination of non-essential uses of asbestos in those products from which fibers are released during reasonably foreseeable conditions of use or misuse.

The Commission is considering two methods of accomplishing this: a generic approach, or a product-by-product approach. If the Commission chooses to use a generic approach, it could address in a single regulatory action the use of asbestos as a component in a number of different consumer products that share similar or related uses.

In making its determination of whether or not to take action, the CPSC will consider detailed risk and economic findings. The CPSC will also take into account the function performed by the asbestos in the product, the cost to industry and consumers of the regulations and the availability of substitutes for the asbestos and the safety of such substitutes.

In cases in which we do not know the asbestos content and whether there is any fiber release, the staff will continue to test products for any asbestos fiber emission.

Summary of Benefits

Sectors Affected: General public.

The primary benefit of asbestos regulations is to reduce consumer exposure to a known human carcinogen.

Asbestos fiber inhalation has been linked with lung cancer, asbestosis, and mesothelioma (cancer of the pleura—the membranes surrounding the lung). These diseases can inflict pain and are often fatal. They may cause large financial burdens due to medical expenses that result. The CPSC believes that by reducing the release of asbestos from

consumer products it will help alleviate some of these unfortunate consequences.

Summary of Costs

Sectors Affected: Asbestos mining industry; and all manufacturers, wholesale and retail traders, and users of products containing asbestos. The CPSC estimates that some economic impact may occur on industry in those cases where a mandatory regulation concerning asbestos-containing products occurs. Current studies are now being made to determine potential costs to industry in developing substitutes for asbestos in consumer products.

Related Regulations and Actions

Internal: In 1977, the Consumer Product Safety Commission banned consumer patching compounds containing asbestos and artificial emberizing materials for fireplaces that contained respirable asbestos (16 CFR 1304 and 1305).

External: The Environmental Protection Agency (EPA) may shortly propose for comments a life-cycle reporting and recordkeeping requirement on asbestos. In September 1980, EPA published a corrective action program for school buildings containing asbestos.

The Occupational Safety and Health Administration (OSHA), during spring 1980, published for comments a proposal for reducing occupational exposure to asbestos from 2 fibers per cubic centimeter to 100,000 fibers per cubic meter.

Active Government Collaboration

We have worked closely with the Environmental Protection Agency to ensure that our efforts to investigate and possibly regulate the use of asbestos will be coordinated, compatible, and nonduplicative. EPA simultaneously published an ANPRM in October 1979 which describes that agency's systematic effort to gather information on groups of asbestos products, and to evaluate risk from these products based on the "life cycle" concept. In the life cycle analysis, the Agency examines cumulative risk from human exposure to asbestos from primary processing through end use and disposal. The CPSC's ANPRM describes an approach to the investigation of possible health risks that may be associated with the use of asbestos in a number of consumer products.

Through close cooperation in our regulatory endeavors, EPA and CPSC hope to achieve the following three objectives: The first is to reduce

significantly, through complementary actions, unreasonable human health risk from exposure to asbestos. The second is to reduce potential reporting burdens on industry by coordinating information-gathering activities. Third, to avoid inconsistent or needlessly burdensome regulations, we will develop regulatory actions that may result from these investigations in close consultation with each other.

CPSC published, jointly with EPA, an ANPRM in the Federal Register of October 17, 1979 (44 FR 60057) on consumer products containing asbestos. Comments on that ANPRM have been received and reviewed.

Timetable

General Order to Industry—End of 1980.

Regulatory Analysis—The Commission, as an independent agency, is not required to prepare a Regulatory Analysis as defined under E.O. 12044. However, the Commission prepares essentially the same information in its own rulemaking proceedings.

Available Documents

CPSC—Consumer Products Containing Asbestos; Advance Notice of Proposed Rulemaking—44 FR 60057, October 17, 1979.

Briefing Package of Comments on Advance Notice of Proposed Rulemaking, September, 1980 and briefing package on Petition to Ban Asbestos Paper, April, 1980.

16 CFR 1304 and 1305: Ban on asbestos-containing patching compounds and emberizing materials, January, 1977.

Copies are available from the Office of the Secretary, U.S. Consumer Product Safety Commission, 1111 18th Street, N.W., Washington DC 20207.

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CPSC

Omnidirectional Citizens Band Base Station Antenna Standard (16 CFR Part 1402*)

Legal Authority

Consumer Product Safety Act, §§ 7 and 14, 15 U.S.C. §§ 2056 and 2063.

Reason for Including This Entry

This standard may impose a major increase in costs or prices for antenna manufacturers, distributors, retailers, and purchasers.

Statement of Problem

The Consumer Product Safety Commission (CPSC) staff estimates that approximately 220 persons in 1975, 275 persons in 1976, and 220 persons in 1977 were electrocuted in incidents involving communications antennas. The vast majority of these deaths occurred when people were putting up or taking down the antennas which in the process contacted electric power lines. Typically, these incidents occur when the antenna contacts the power line while people are transporting it to the erection site or when it falls into a power line because it gets out of the control of the people who are putting it up or taking it down. The Commission estimates that over 70 percent of the antennas involved in these accidents are Citizens Band (CB) base station (other than mobile) antennas.

On June 29, 1978, the Commission issued a rule under § 27(e) of the Consumer Product Safety Act which requires manufacturers and importers of (1) outdoor Citizens Band (CB) base station antennas, (2) outdoor television antennas, and (3) antenna-supporting structures to provide purchasers with (a) instructions on how to avoid the hazard of contacting electric power lines with the antenna or supporting structure while putting it up or taking it down, (b) labels on the antennas and supporting structures warning of this hazard and referring the reader to the instructions, and (c) statements on the packaging or parts container, and at the beginning of the instructions, warning of this hazard and referring the reader to the instructions. We intend this rule to help prevent injuries and death from electric power lines when people put up or take down antennas or antenna-supporting structures. The Commission reasoned that if consumers know of the danger and how to avoid it, they will be better able to take the necessary steps to protect themselves.

While the Commission believes that the present information and labeling rule will reduce the deaths that occur because of the contact of television and CB base station antennas with electric power lines, the Commission also believes that a standard which would help ensure that the antenna would not transmit a harmful amount of electricity to the installer if the antenna did contact a power line may address the risk of electrocution more effectively, and

thereby cause a greater reduction in deaths.

The Commission is presently developing a standard directed only at non-directional CB antennas because they account for the largest number of reported injuries. Moreover, they can be insulated more readily than TV and directional CB antennas because they have fewer joints and element parts.

Alternatives Under Consideration

Possible alternatives to pursuing a mandatory standard at this time include delaying further action until we measure the § 27(e) information and the labeling rule's ability to reduce deaths and injuries. The Commission estimates that it could take from 1 to 2 years to assess the rule's effectiveness because of the time it takes to influence the product mix (number of complying products) in the marketplace.

Another alternative is a voluntary approach through the Electronics Industries Association (EIA). The EIA has formed an ad hoc committee to develop a voluntary standard for CB omnidirectional base station antennas. However, the EIA committee has been unable to obtain the resources to conduct the research needed to develop a standard. In addition, it is unclear what the level of effectiveness of, or industry conformance with, a voluntary standard would be, and therefore we do not know what percent of the known antenna-related deaths could be prevented by an EIA standard that might be developed.

Under the Consumer Product Safety Act, CPSC may develop a proposed consumer product safety standard in the following ways: (1) We may invite people or organizations outside the Commission to develop a recommended standard (those who submit such offers are referred to as "offerors" and the development of recommended standards in this manner is called the "offeror process"); (2) the Commission may invite people or organizations outside the Commission to submit to the Commission an existing standard which it could propose as a consumer product safety standard; (3) the Commission may publish an existing standard as a proposed consumer product safety standard; or (4) the Commission may develop the standard itself.

The standard under development is a performance standard, and is expected to apply to importers, as well as U.S. manufacturers.

In the case of the electrocution hazard associated with CB base station antennas, the Commission is not aware that any Federal department or agency or other qualified agency, organization,

or institution has issued, adopted, or proposed any standard that would adequately reduce the risk and that the Commission could publish as a proposed standard. The Commission has determined that it would be more expeditious to develop this standard itself than for interested parties outside the Commission to develop the standard. The Commission started the proceeding by publishing an ANPRM in the Federal Register in September 1979.

Summary of Benefits

Sectors Affected: Users, installers, manufacturers, and importers of CB base station omnidirectional antennas.

The benefits from this proceeding are related to the injury and death information we cited in "Statement of Problem." The staff estimates that the standard could prevent many of the deaths associated with outdoor communications antennas (all outdoor antennas) by addressing omnidirectional (reception and transmission essentially uniform in all directions) CB antennas only.

In addition to the reduction in deaths associated with the standard, we anticipate that the § 27(e) rule will reduce other deaths: (a) some deaths that would otherwise be associated with antennas manufactured between October 1978, the effective date of the § 27(e) rule, and the date when the new standard will take effect; (b) some deaths otherwise associated with antennas or voltages that the standard will not cover; and (c) some deaths where contact would be between the power line and the mast or other support structures, rather than the antenna itself.

Certain provisions of the standard may also benefit consumers in the form of increased useful life of the product.

Manufacturers and importers of these antennas may also benefit from a decrease in product liability suits to the extent the standard reduces accidents.

Summary of Costs

Sectors Affected: Manufacturing, importers, wholesale and retail trade; and purchasers of CB base station omnidirectional antennas.

The CPSC staff estimates that the average price of CB antennas will probably increase as a result of the standard; however, we cannot supply precise estimated figures at this time because the costs are dependent upon the requirements to be developed.

We anticipate that manufacturers may meet the standard by coating or covering the antenna with a nonconductive material, by constructing

antennas of a nonconductive material with an embedded conductor, or by electrically separating the antenna from the antenna mast or antenna support structure by a nonconductive material.

Current retail prices for omnidirectional CB antennas range from \$20.00 to over \$150.00. The price of some antenna may not increase at all because of the standard. Some manufacturers have claimed that, depending on provisions of the standard, price increases for some antennas may range up to 50 percent or more. Certain producers, particularly the smaller companies in the industry, may leave the omnidirectional CB antenna market if they cannot develop the capability to produce complying antennas at a reasonable cost.

Related Regulations and Actions

Internal: "CB Base Station Antennas, TV Antennas and Supporting Structures: Warning and Instructions Requirements," 16 CFR 1402, 43 FR 28392.

External: Electronics Industry Association (EIA) development of a Voluntary Standard for CB Antennas.

Active Government Collaboration

We encourage Federal agencies and State governments to participate in developing the standard by submitting comments.

Timetable

NPRM—April 30, 1981.

Public Comment Period—May and June 1981.

Final Rule—October 30, 1981.

Regulatory Analysis—the Commission, as an independent agency, is not required to prepare a Regulatory Analysis as defined under E.O. 12044. However, the Commission prepares essentially the same information in its rulemaking proceedings.

Available Documents

Comments from public meeting held November 17, 1980, in Washington, DC. "CPSC Staff Briefing Packages," dated January 23, 1979 and August 1, 1979.

ANPRM—"Omnidirectional Citizens Band Base Station Antennas—Proceeding to Develop a Consumer Product Safety Standard by the Commission," 44 FR 53676, September 14, 1979.

"Accident Factors Relevant to the Development of A Safety Standard for Omnidirectional Citizens Band Base Station Antennas," June, 1980.

"Research and Technical Service for Safety Standard Development for CB

Based Station Antennas Final Report," June, 1980.

These documents are available from the Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, DC 20207.

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CPSC

Safety Requirements for Chain Saws

Legal Authority

Consumer Product Safety Act, 15 U.S.C. § 2051, *et seq.*

Reason for Including This Entry

The Commission estimates that there were over 100,000 chain saw injuries requiring medical attention in 1979, an increase from an estimated 77,000 injuries in 1976. This rulemaking proceeding aims to reduce these injuries and is of public interest to those concerned about consumer safety and well being.

Statement of Problem

In recent years, the increased use of wood-burning stoves and fireplaces in this country has brought about the increased use of chain saws by consumers. It is estimated that industry shipped 3.8 million professional and home use chain saws for sale in 1979, compared to 2.3 million in 1976. Unfortunately, the increase in the use of chain saws has been accompanied by an increase in injuries associated with them. The Commission estimates that there were over 100,000 chain saw injuries requiring medical attention in 1979, which is up from an estimated 77,000 injuries in 1976. It further estimates that about 23 percent of the injuries associated with chain saws resulted from a phenomenon known as "kickback." The other injuries result from contact with the chain in motion or when stopped from loss of control of the saw or of balance of the operator, from the saw bouncing, from following through after the cut, or from falling material.

Kickback is the sudden and potentially violent rearward and/or upward movement of the chain saw that can be caused by sudden interference with the movement of the chain. This interference can be caused by the chain binding in the cut, by the chain hitting an unusually hard portion or obstruction

in the wood being cut, or by the chain striking the wood or another object on the top quadrant of the tip of the bar. This interference with the movement of the chain transfers the energy that is driving the chain into a movement of the entire saw, causing the bar tip to move back and/or up so fast that the operator may be struck by the moving chain, frequently in the face, neck, or throat area.

Manufacturers have developed a number of devices in attempts to reduce the risk of kickback occurring or to reduce the likelihood of injury if it occurs. One way to help prevent kickback is to provide a guard to cover the chain at the upper quadrant of the tip of the blade, thereby preventing contact with the chain in this area. Another way is to provide a chain brake intended to stop the chain before contact with the operator can occur. The chain brake is generally operated by contact of the operator's hand with a hand guard as the saw moves back, although some types of chain brakes are automatic and do not depend upon the user's hand. These automatic brakes are actuated by an inertial sensing device. A hand guard alone can also provide significant protection against kickback and other injuries. Manufacturers have also designed "low-kick" guide bars and chains which are intended to reduce the energy generated when the chain at the bar tip contacts an object.

By a letter dated March 21, 1977, John Purtle, Esq., of Batesville, Arkansas, petitioned the Commission (Petition CP 77-10) to begin proceedings under § 7 of the Consumer Product Safety Act (CPSA) to develop a mandatory consumer product safety standard to "minimize and prevent chain saw kickback." Mr. Purtle suggested that every chain saw incorporate a safety device such as "... a chain saw brake, a nose-tip guard, a kill switch or other safety device."

Alternatives Under Consideration

While the Commission's staff was evaluating this petition in 1977, the Chain Saw Manufacturers Association (CSMA) met with the staff. CSMA recommended that the petition be denied on the grounds that a mandatory standard was not needed because the industry was taking significant voluntary steps to address the chain saw kickback hazard. CSMA estimated that 50 to 60 percent of the saws being sold at that time already contained some type of kickback protection. The industry expected the American National Standards Institute (ANSI) to approve an interim design standard by February 1978. The interim voluntary

design standard (ANSI B 175.1, published in April 1980), would require gasoline chain saws to incorporate such protection as a nose-tip guard, a chain brake, a low kick chain, or a low kick guide bar. The technology to define kickback in terms of a performance standard did not exist, but CSMA estimated at that meeting that a test method could be developed and performance requirements drafted in approximately 2½ years.

In December 1977, CSMA proposed a joint 18-month effort with the Commission to develop a voluntary performance standard. The Commission directed the staff to study the proposal to determine whether it provided an acceptable approach. In March 1978, the staff recommended the voluntary effort as the most expeditious and cost effective strategy for reducing chain saw kickback injuries.

Subsequently, the Commission denied the petition to establish a mandatory standard (43 FR 26103, June 16, 1978) and in June 1978, formally agreed to participate with CSMA in a joint effort to develop a voluntary performance standard to reduce chain saw kickback injuries. The joint process involved the active participation of consumer, industry, and government representatives in the development of testing equipment and procedures, study of operator interaction with the saw, and analysis of injury data. The agreement specified that work on the standard was to be completed by December 31, 1979.

On December 21, 1979, CSMA submitted to the Commission draft performance requirements for chain saws and backup documentation. CSMA considered the draft to be both "a final standard and rationale" containing sufficient information for CPSC to write a supportable performance standard proposal, although additional work on correlation between the standard and rationale was needed.

The draft standard submitted by CSMA calls for using a specified test apparatus to measure the maximum energy generated at the tip of the chain bar at the initial moment of kickback. A computer model then translates the maximum energy measurement into the angle that the saw would rotate toward an operator. In making this translation, the model uses (1) the energy measurement, (2) information describing key characteristics of the saw being tested, (3) an equation for converting the measured energy into horizontal, vertical, and rotational energy, and (4) formulas intended to describe the influence of the operator's hands on the handle during kickback. The result is a

"Derived Angle of Rotation," which is compared to acceptance criteria to determine whether the saw meets or fails the requirements.

The staff's evaluation of CSMA draft standard and rationale has left serious doubts that the standard as submitted would reduce injuries associated with chain saws. Staff identified the following specific deficiencies:

1. The portion of the computer model that attempts to account for the action of the operator's hands on the saw is based on an unproved equation. Furthermore, the study did not establish that the hand-held tests that were performed by CSMA related to the situation where kickback occurs with an unsuspecting user.

2. The lack of a method to determine the angle at which the chain would stop, and the inability of the model to predict the angle at which the chain stops, prevent use of the acceptance criteria applicable to chain brakes.

3. There is no analysis of the sensitivity of the computer model to variations in input data.

4. The draft standard would apply only to saws with an engine displacement of 3 cubic inches (CID) and less, whereas the Commission has data indicating that saws up to 4.5 CID are used regularly by consumers.

These deficiencies, and the failure of CSMA to perform the development process in the manner specified in the agreement with the CPSC, caused the Commission to conclude preliminarily that it cannot rely on the voluntary process being conducted by CSMA to adequately protect the public from the risk of injury associated with the kickback of chain saws. Furthermore, the Commission preliminarily concludes that the risk of kickback injuries associated with chain saws is unreasonable and that a consumer product safety standard is necessary to reduce or eliminate this unreasonable risk.

In starting the effort to develop a standard addressing chain saw kickback, the Commission expects the standard to apply to both gasoline-powered and electric chain saws. The standard that we develop could be a performance standard that would, for example, specify allowable levels of kickback energy or allowable kickback angles under specified test conditions. However, if the Commission concludes that a performance standard is not feasible, the standard could require the incorporation of specified design features to reduce the risk of kickback injuries. Or, the standard might incorporate both design and performance requirements. In addition,

we have not determined whether the standard should apply only to the assembled chain saw; only to components of the saw such as saw chain, or both; or whether replacement parts such as saw chains should be subject to requirements of the standard. These questions will be considered by the Commission during the development of the standard. For the time being, however, where the term "chain saw" is used in this regulatory development it also refers to the components and replacement parts of chain saws.

In the case of the kickback hazard associated with chain saws, the Commission is not now aware of any standard issued, adopted, or proposed by any Federal department or agency or by any other qualified agency, organization, or institution that could be published as a proposed standard by the Commission. CPSC is undertaking further analysis of foreign standards.

The voluntary standard presently in effect in the United States (ANSI B 175.1, Safety Specification for Gasoline Powered Chain Saws, published in April 1980), while requiring at least some features designed to reduce the hazard, does not go far enough and still permits the marketing of consumer chain saws which present an unreasonable risk of injury. ANSI is developing a similar standard, ANSI B 175.2, for electric chain saws. There are also a number of standards in effect in foreign countries that may be effective in reducing the unreasonable risks of kickback, but the requirements of these standards have not been developed or analyzed to the point that we could propose them as a consumer product safety standard at this time.

If a valid voluntary standard applicable to a sufficient number of consumer saws is developed and implemented in the future, the Commission could reconsider the need to continue the development of a mandatory standard at that time.

Summary of Benefits

Sectors Affected: Users of chain saws, especially working-age males and their dependents.

The benefits we expect from this proceeding are improved public health and safety through the prevention of accidents and injuries associated with chain saws. We estimate that over 100,000 injuries occur annually requiring medical treatment. There are also an increasing number of deaths associated with this product.

The purpose of these proceedings would be to reduce injuries and deaths and the costs associated with them. These costs can be considerable.

For example, assuming kickback injuries are a fairly constant proportion of total chain saw injuries, the Commission estimates that the cost (in 1978 dollars) of chain saw kickback injuries, not including pain and suffering, was \$12 million in 1976, \$17 million in 1977, \$22 million in 1978, and \$24 million in 1979. We estimate injury costs (in 1978 dollars), including pain and suffering, at \$28 million in 1976, \$40 million in 1977, \$51 million in 1978, and \$54 million in 1979. These cost estimates include hospital cost, follow-up medical treatment costs, foregone earnings, health insurance costs, product liability insurance, litigation cost, transportation cost, and patients' visitors' foregone earnings and transportation costs.

A reduction in any of these costs would be a sizable benefit to the accident victims and their families.

Summary of Costs

Sectors Affected: Professionals who use consumer chain saws; and manufacturing of consumer chain saws.

Professional users of consumer chain saws may find that low kick bar and chain safety requirements may decrease cutting speed of the saws. They may also find saws with chain brakes more expensive and heavier. Increased cost for a chain saw could be up to \$10.00, or less than 10 percent of the total cost of the saw, depending on the requirements of the final standard and the changes needed to comply with it.

Economic costs of these safety requirements for manufacturers, suppliers, and purchasers would be minimal and would depend in part on the need to retool and redesign to comply with the standard. Many manufacturers now offer chain brakes and chain guards as options. Additional cost would also vary depending on whether or not specific parts suppliers have already retooled for options now available.

Related Regulations and Action

Internal: None.

External: In spring 1980, the State of Washington proposed safety standards for chain saws including requirements for chain brakes and low kick chains. The U.S. Environmental Protection Agency is considering the need for requirements for chain saws as part of its noise abatement program.

Active Government Collaboration

The National Bureau of Standards (NBS) of the Department of Commerce has provided some technical analysis concerning the Commission's safety activities on chain saws. We will ask

NBS to continue to do so in this regulatory development.

Timetable

NPRM—To be determined.
Public Hearing—To be determined.
Public Comment Period—To be determined.
Regulatory Analysis—The Commission, as an independent agency, is not required to prepare a Regulatory Analysis as defined under E.O. 12044. However, the Commission prepares essentially the same information as a part of its rulemaking proceedings.
Final Rule—To be determined.
Final Rule Effective—To be determined.

Available Documents

Notice of Intent to Develop Standard for Chain Saws, 45 FR 62392, September 19, 1980.

"CPSC Staff Briefing Packages," dated November 1977, March 1978, and April 15 and May 28, 1980, are available from the Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, DC 20207.

Denial of Petition from John Purtle, 43 FR 26103, June 16, 1978.

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CPSC

Upholstered Furniture Cigarette Flammability Standard

Legal Authority

Flammable Fabrics Act, § 4, 25 U.S.C. § 1193.

Reason for Including This Entry

One of the major causes of deaths, injuries, and property damage in the United States each year is from fires in upholstered furniture started by burning cigarettes. Appropriate action is needed to reduce this death and injury toll.

A mandatory upholstered furniture cigarette flammability standard could increase costs for upholstered furniture manufacturers, distributors, and retailers, and increase prices for purchasers.

Statement of Problem

The staff of the Consumer Product Safety Commission (CPSC) estimates that 45,000 upholstered furniture fires

occur each year in residences in the United States, 30,000 of which are associated with cigarettes. Our current estimates indicate that 5,000 injuries and 1,600 deaths occur annually because of those fires. Cigarette-ignition of residential upholstered furniture causes 3,700 of the injuries and 1,300 of the deaths. Among other actions, the Commission is considering a cigarette-ignition resistant flammability standard for upholstered furniture to reduce the number of injuries and deaths.

The Commission staff estimates that property damage resulting from cigarette ignition of upholstered furniture runs more than \$100 million (in 1978 dollars) annually. The losses of life are difficult to express in economic terms, especially since the Commission does not endorse monetary estimates of the value of human life. The CPSC staff has used a figure of \$1 million per life for illustrative purposes only. This figure is within the range of estimates that are associated with studies of the "statistical value of life." The "statistical value of life" is derived from observations and inferences of how much people are willing to pay to reduce the risk of death. The willingness to pay can also be derived from compensating wage differentials for life-threatening jobs. Literature dating back over the past 20 years provides much of the foundation for the statistical value of life cited here. The annual cost of lives lost, therefore, could be about \$1.3 billion. The staff has also estimated \$40 million for annual injuries, exclusive of pain and suffering. A rough estimate of the annual losses associated with cigarette ignition of upholstered furniture, thus, exceeds \$1.4 billion.

Alternatives Under Consideration

The major alternative to a mandatory standard is the Upholstered Furniture Action Council's (UFAC) Voluntary Action Program. UFAC believes that manufacturers who agree to build furniture according to the provisions of the UFAC program will produce furniture that can resist ignition by cigarettes. This program provides for the classification of upholstered fabrics into two categories based on their performance in a cigarette-ignition test that UFAC developed. For furniture containing the more cigarette-ignition-resistant Class I fabrics, this voluntary program requires elimination of ignition-prone welt cord (heavy yarn enclosed by fabric around the edges of furniture cushions) and untreated cotton beneath the decking fabric (the material on which a loose seat cushion rests) and in immediate contact with the covering of inside vertical furniture walls. The

requirements for furniture containing Class II fabrics are the same as for Class I, with the addition that furniture using Class II fabrics must also avoid contact between conventional polyurethane foam cushions and horizontal seating surfaces. The UFAC voluntary program provides test methods to determine acceptable filling materials (such as treated cotton batting, polyester batting, etc.) for use in furniture.

Tests carried out by CPSC and UFAC during 1979 indicated that the UFAC Voluntary Action Program had a strong potential for significantly increasing the safety (cigarette ignition resistance) of upholstered furniture. Therefore, the program might substantially reduce the annual loss of life, injuries, and property damage attributed to cigarette ignition of upholstered furniture, and the economic losses calculated above. Late in 1979, the Commission voted to defer any regulatory action on the flammability of upholstered furniture for 1 year in order to determine the effectiveness of UFAC's voluntary program in reducing the ignition of upholstered furniture by cigarettes. This 1-year evaluation is now in progress.

If the industry's voluntary program is not effective, CPSC will consider proposing a mandatory performance standard which is now in draft form. Under this draft proposed mandatory standard, firms would test upholstery fabrics and place them into one of four classes—"A" through "D"—on the basis of their resistance to ignition from cigarettes burned on the fabric. Fabric manufacturers would label fabrics according to these classes to show their flammability classification.

Furniture manufacturers would determine furniture constructions suitable for use with the fabric classes by testing mockups of the furniture to demonstrate their resistance to cigarette ignition. The standard would require annual testing, and permit manufacturers to use only the combinations of fabric and filling material that did not ignite when the applicable mockup was tested.

Summary of Benefits

Sectors Affected: Users of upholstered furniture.

The benefits we expect from the proceeding are related to the injury and loss statistics we cite in "Statement of Problem." The staff estimates that the draft proposed mandatory standard could prevent more than 1,000 deaths, 3,000 injuries, and \$96 million in property damage annually, which constitutes 86 percent of the losses. The Commission staff estimates that the annual benefits (calculated as discussed

in "Statement of Problem") could be about \$1.25 billion when all upholstered furniture is manufactured in compliance with the standard. However, benefits attributable to the standard might be lower than this to the extent that more cigarette-ignition-resistant furniture is produced before the standard goes into effect, such as may result from the UFAC Voluntary Action Program discussed above. The Commission staff will assess this factor before the Commission decides whether to propose the standard.

Other benefits that may be related to the cigarette-ignition standard are a reduction in losses associated with pain and suffering from burn injuries, a possible reduction in losses due to ignition sources other than cigarettes, and a possible increase in the durability of upholstered furniture fabrics as thermoplastics replace cellulosic fibers.

Summary of Costs

Sectors Affected: Upholstered furniture manufacturing; textile mill products manufacturing (particularly cotton and other cellulosic fibers); upholsterers of used furniture for resale; and wholesale and retail trade, and users of upholstered furniture.

In 1978, the CPSC staff estimated that the annual retail cost increase to the consuming public as a result of the mandatory standard which it is considering would range from \$114 to \$174 million (in 1978 dollars).

The staff estimates that the average manufacturing cost (in 1978 dollars) increases would range from \$1.75 to \$2.65 per piece (\$3.50 to \$5.30 retail price increase) for chairs and from \$3.30 to \$5.00 per piece (\$6.60 to \$10.00 retail price increase) for sofas.

The CPSC staff estimates that the possible increases in manufacturing cost (in 1978 dollars) that result from the standard would range from \$57 to \$87 million in the first year that all provisions of the standard are in effect. The projected increase consists of anticipated costs of \$8-\$11 million for fabric classification testing; \$8 million for costs of mockup testing; \$18 to \$33 million for use of filling material with greater resistance to cigarette ignition; \$12 to \$17 million for smolder-resistant backcoating of 50 percent of the Class D fabrics, which are the least smolder-resistant fabrics that the fabric classification test reveals; \$8 to \$11 million for the use of foil barriers on 10 percent of the furniture pieces that are covered with Class D fabrics; and \$3 to \$5 million for required recordkeeping.

Consumers may find fewer types of upholstery fabrics available. The Commission staff expects heavier fabrics, such as damasks, jacquards,

and velvets that are made from cotton and rayon to require more extensive and costly treatment under the standard. CPSC staff expects the early response to be a shift by the furniture industry away from these fabrics to fabrics made from thermoplastic fibers, such as nylon, polyester, or olefin. If the Commission issues the standard, we estimate that the furniture industry may not use 10 to 14 percent of currently available fabrics.

The Commission staff expects that the standard would result in relatively greater cost increases for the smaller furniture producers (who make up about 50 percent of all producers) than for larger producers; smaller producers would face higher furniture mockup testing costs as a percentage of sales. These costs may represent about 2 percent of the total value of shipments for firms with less than \$250,000 in annual sales. Firms with about \$2 million in annual sales are expected to face costs for mockup testing totaling about .3 percent of their value of shipments. Firms with annual sales of about \$7 million can expect to have mockup testing costs of only .1 percent of their value of shipments. This disparate effect on smaller firms may be made worse to the extent that these firms produce furniture covered with fabric supplied by the customer, which is more likely to be Class D fabric. The requirement for Class D mockup tests would substantially increase the price of such special order items. The Commission believes that smaller furniture manufacturers are more likely than larger ones to produce furniture with a customer's own material.

Small fabric producers, like small furniture producers, can expect to face higher testing costs as a percentage of sales than larger fabric producers. In addition, these firms are more likely to produce cotton or other cellulosic fabrics that would be expected to decline in demand as an early response to the standard. Conversion by these firms to greater use of thermoplastic fibers may be difficult. Capital expenditure to alter machinery may be necessary. Furthermore, these changes would place these firms in more direct competition with the larger firms that now produce thermoplastic fabrics.

Changes in filling materials used under the standard may affect suppliers of polyester fiberfill and urethane foam cushioning who are likely to face a reduction in demand by the furniture industry. Others, such as producers of cotton batting, are likely to face a reduction in demand by the furniture industry. The extent of the reduction in demand for certain filling materials, as well as for cellulosic fabrics, will largely

depend on the result of research now underway into smolder-retardant treatment methods for materials which are flammable.

The Commission staff will review the estimated costs of compliance with the standard before the Commission decides whether to propose the rule, because the cigarette-ignition characteristics of materials used by the furniture industry have changed in recent years. Also, the change in materials used as a result of compliance with the UFAC Voluntary Action Program may alter the costs of compliance with the mandatory standard. We may also make some revisions to our 1978 costs estimates as the result of comments submitted by the industry and other information that has come to the staff's attention.

Related Regulations and Actions

Internal: None.

External: The State of California has flammability regulations, parts of which the CPSC standard may preempt. Other States may have similar regulations.

Active Government Collaboration

The National Bureau of Standards of the Department of Commerce developed the technical basis for the standard.

Timetable

ANPRM—To be determined.

NPRM—To be determined.

Regulatory Analysis—The Commission, as an independent agency, is not required to prepare a Regulatory Analysis as defined under E.O. 12044. However, the Commission prepares essentially the same information in its rulemaking proceedings.

Public Hearing—To be determined.

Public Comment Period—To be determined.

Final Rule—To be determined.

Final Rule Effective—To be determined.

Available Documents

"CPSC Staff Briefing Packages," November 15, 1978 and September 27, 1979, and other applicable material related to upholstered furniture flammability are available from the Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, DC 20207.

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CPSC

Urea Formaldehyde Foam (UFF) Insulation

Legal Authority

Consumer Product Safety Act, 15 U.S.C. § 2051 *et seq.*

Reason for Including This Entry

This investigation is of great public interest because of possible adverse health and safety effects of urea formaldehyde foam (UFF) insulation. It is of special interest to consumers with homes containing the insulation, to consumers considering the purchase of it, and to those who manufacture, distribute, sell, and install it.

Statement of Problem

The Consumer Product Safety Commission (CPSC) is concerned about adverse safety and health effects that may be associated with UFF insulation. This type of home insulation, which is also referred to as urea-based foam insulation or foamed in-place insulation, is manufactured at the job-site. Workers drill holes in existing wall cavities and pump in the resin and a foam agent through pressurized hoses. There are an estimated 400,000 installations of UFF insulation. The Commission has received over 1,500 reports about adverse health effects that may be associated with the release of formaldehyde gas from UFF insulation. It has conducted over 400 in-depth injury investigations of the injury reports; over 25 percent of these injuries resulted in either a temporary or permanent period of dislocation of consumers from their homes. The in-depth investigations indicate that in some cases, consumers were hospitalized. The range of severity of reported reactions varies from short-term discomfort to greater impairment, such as the loss of visual acuity, and reduction in lung function.

Current information suggests that the most common reactions of consumers exposed to formaldehyde gas released from UFF insulation are: (1) eye, nose, and throat irritation; (2) coughing and shortness of breath; (3) skin irritation; (4) headaches and dizziness; and (5) nausea. Persons with respiratory problems or allergies, especially persons who are allergic to formaldehyde, can suffer more serious reactions.

In addition to the above effects current information indicates that formaldehyde is a strong sensitizer, so that exposed individuals may experience progressively more severe

reactions to formaldehyde at increasingly low levels of exposure. Sensitized individuals may find it increasingly difficult to stay in their homes. In some cases, the individual's sensitization to formaldehyde is so severe that after leaving the home, the consumer may be adversely affected by exposure to even very low levels of formaldehyde from other sources. Since there are many sources of formaldehyde exposure, complete avoidance of this exposure may be nearly impossible.

Although some consumers' reactions to formaldehyde may be so severe that they seek medical attention, many others may experience a less specific but persistent discomfort that may be mistaken for a cold, allergy, or general rundown feeling.

In addition to the potential adverse safety and health effects described above, based on the acute toxic and sensitization aspects of formaldehyde, interested persons should be aware of the following information concerning the possible carcinogenic potential of formaldehyde. Preliminary test results from the Chemical Industry Institute of Toxicology (CIIT), a scientific organization supported by 36 U.S. chemical corporations, show that rats exposed to formaldehyde gas (15 parts per million (ppm)) developed squamous cell carcinomas of the nose beginning after 12 months of exposure. Rats exposed to lower concentrations of formaldehyde and mice exposed to 15 ppm have not developed tumors to date. The Commission has, under the auspices of the National Toxicology Program, convened a panel of scientists from within the Federal Government. This panel will help assess the human health implications of this study and the health implications of exposure to formaldehyde. The findings of the panel are expected in November 1980.

Information currently available to the Commission indicates that the potential for UFF insulation to release formaldehyde may be dependent on the following factors: (a) quality of ingredients in the insulation; (b) age or shelf life of ingredients; (c) viscosities of ingredients; (d) ratios of ingredients; (e) temperatures at which foaming occurs; and (f) mixing of ingredients. Additional factors that may increase the likelihood of liberating formaldehyde are: (a) excess formaldehyde in the resin; (b) excess catalyst in the foaming agent; (c) excess foaming agent; (d) improper ratio of resin to foaming agent; (e) foaming at high humidities; (f) foaming with cold chemicals; (g) dry density of foam exceeding the manufacturer's specifications; (h) application against

recommended practice; and (i) improper use or lack of vapor barriers.

After the UFF insulation is in place it may begin to release formaldehyde, either immediately or after a delay, and may continue to release formaldehyde indefinitely. Available information indicates that heat and humidity may increase formaldehyde emissions. Because of these factors, the Commission believes that some consumers may insulate their homes in the winter months and not experience adverse health and safety effects until the summer months.

Formaldehyde is also an ingredient in many different consumer products, including textiles, paper, and wood products.

American industry produces an estimated 6.5 billion pounds of formaldehyde annually with about half of the annual production going into wood products such as plywood, fiber board, and particleboard. Manufacturers of these products combine formaldehyde with urea or phenol to create an inexpensive, effective binding agent.

Alternatives Under Consideration

At the present time the Commission is continuing to gather and assess epidemiological, technical, and economic information concerning UFF insulation.

On October 20, 1976, the Metropolitan Denver District Attorneys' Consumer Office filed a petition under § 10 of the Consumer Product Safety Act (CPSA) 15 U.S.C. § 2059, requesting the Commission to develop a safety standard under § 7 of the CPSA, 15 U.S.C. § 2065, for certain types of home insulation products, including UFF insulation. The petitioner claimed that there is an unreasonable risk of injury of irritation and poisoning associated with UFF insulation. After considering information compiled by the Commission staff, on March 5, 1979, the Commission decided to defer a decision on the parts of the petition that dealt with UFF insulation and instructed the Commission staff to evaluate additional information on possible means of addressing this alleged unreasonable risk of injury (44 FR 12080, March 5, 1979).

The Commission held public hearings concerning safety of formaldehyde gas from UFF insulation in Portland, Oregon, on December 13, 1979; in Atlanta, Georgia, on January 10, 1980; in Minneapolis, Minnesota, on February 5, 1980; and in Hartford, Connecticut, on February 26, 1980. The primary purpose of the hearings was to obtain additional information concerning health and safety problems that may be associated

with UFF insulation. The Commission is also considering information presented at the hearings about safety and health problems that may be associated with the release of formaldehyde from other consumer products.

In their decision on what regulatory actions, if any, should be taken for UFF insulation and other products containing urea formaldehyde, the CPSA Commissioners will consider the evaluation of additional information, including that obtained at the public hearings. This additional evaluation will allow a more comprehensive and thorough evaluation of the hazard of these products and the costs involved in the various actions that the Commission can take to address the problem.

The Commission has proposed a regulation under § 27(e) of the CPSA (15 U.S.C. § 2076(e)) that would require manufacturers of UFF insulation to provide prospective purchasers with performance and technical data concerning the release of formaldehyde from the product. Several industry commentators have questioned the basis and need for the proposed regulation. The Commission will evaluate and consider these comments before it decides whether to issue a final regulation. Staff plans to present a regulatory options paper to the Commissioners in the near future discussing the need for any additional regulatory action.

The Commission has the authority to take the following regulatory actions, where appropriate, concerning adverse safety and health problems that may be associated with UFF insulation:

(A) Under §§ 7 and 9 of the CPSA (15 U.S.C. §§ 2056, 2058), the Commission could issue a consumer product safety standard for UFF insulation. Such a standard could include requirements concerning the performance, composition, finish, or packaging of the product, or requirements that the product be marked with or accompanied by clear and adequate warnings or instructions. Before issuing such a standard, the Commission must find that the rule is reasonably necessary to eliminate or reduce an unreasonable risk of injury and that issuance of the rule is in the public interest.

(B) Under §§ 8 and 9 of the CPSA (15 U.S.C. § 2057), the Commission could issue a ban of UFF insulation. In addition to finding that the ban is reasonably necessary to eliminate or reduce an unreasonable risk of injury and is in the public interest, the Commission must also find that no feasible standard would adequately protect the public.

(C) Under § 15 of the CPSA (15 U.S.C. § 2064), the Commission could determine that UFF insulation presents a substantial product hazard. After making such a determination, the Commission could order manufacturers, distributors, or retailers of the product to either repair the defect, replace the product with a product that does not contain the defect, or refund the purchase price of the product.

(D) Under § 2(q)(1)(B) of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. § 1261 *et seq.*), the Commission could classify UF foam insulation as a banned hazardous substance. Such a classification would be based on a finding that, notwithstanding cautionary labeling that the Commission may require for the product, the degree or nature of the hazard caused by the presence or use of the product in households is such that the protection of the public health and safety can be adequately accepted only by keeping the product out of the channels of interstate commerce.

Summary of Benefits

Sectors Affected: Consumers of UFF insulation, especially persons with respiratory problems and allergies; and those sensitized to formaldehyde; and manufacturers, wholesale and retail traders, and installers of UFF insulation.

The benefits we expect from this proceeding are improved public health and safety resulting from the reduction of consumer exposure to formaldehyde released from UFF insulation.

The Commission staff estimates that as many as 71,000 homes may have been insulated with UFF insulation in 1979. UFF insulation is pumped into the walls of a home in a shaving-cream-like foam and hardens in place, once inside the wall. This insulation has been primarily used to retrofit existing homes, since the insulation can be pumped through relatively small holes in the walls of standing structures. The Commission staff believes that there are substitutes for most, but not all, uses of UFF insulation. Each of the UFF-insulated homes is a potential source of formaldehyde exposure. The Commission is not aware of a practical solution that has been demonstrated to be effective in all instances to the problem of released formaldehyde gas from UFF insulation. Some of the remedial measures that have been suggested by industry representatives include ventilation by opening windows and doors and turning on air conditioners, the use of ammonia or other chemicals to neutralize formaldehyde gas, painting interior

walls with an oil-base paint to keep formaldehyde gas out of the living areas of the home, and the use of chemically treated air filters to absorb formaldehyde gas. These remedies have not been successful in all cases. In some instances, persons have successfully eliminated problems by removing the UFF insulation after it has hardened. However, since this remedy requires removal of the interior walls of the home, it can be a very expensive solution. The Commission has also received reports that in some instances, formaldehyde gas problems have continued even after the UF foam insulation has been removed.

A written notice to consumers providing performance and technical data describing possible effects of formaldehyde gas released from UFF insulation would give all prospective purchasers more information to decide whether they should buy the product. If consumers who are more likely to have adverse reactions to formaldehyde would refrain from purchasing UFF, this could reduce the total medical and non-medical costs attributable to formaldehyde emissions from UFF installations, without greatly reducing the demand for the product. Also, the firms may realize a decrease in the number of complaints, costs of remedial measures to correct installations involving complaints, law suits involving adverse health effects, and unfavorable publicity.

Summary of Costs

Sectors Affected: Manufacturers, wholesale and retail traders, installers, and consumers of UFF insulation.

The major economic impact of a notification requirement on the UFF insulation industry would be a possible reduction in the number of installations. It is difficult to project the decrease in the number of installations that may result from a rule requiring notification of possible adverse health effects, since they would depend on factors such as: (1) previous State and local actions; (2) previous public awareness of the possible effects of formaldehyde emissions; (3) the wording of the notice; (4) consumers' expectations of savings in costs to heat and cool their homes as a result of this UFF installation; and (5) the availability and cost of alternative insulations.

Related Regulations and Actions

Internal: None.

External: The Commission is aware of the following actions taken by the State and Federal agencies concerning UFF insulation.

(1) The State of Massachusetts has declared UFF insulation to be a banned hazardous substance and has required the removal of the UFF insulation from commerce in that State (105 CMR: Department of Public Health 650.020). The Massachusetts ban became effective November 14, 1979. The Massachusetts regulations are currently in litigation, although the ban itself is in effect during this litigation. Also, the State proposed repurchase provisions in July 1980. This would entitle homeowners who have had their homes insulated with UFF insulation to have the foam removed from their homes at the manufacturers' expense if at least one occupant of the structure has suffered adverse health effects which occurred or were aggravated after exposure to the UFF insulation.

(2) The Attorney General's Office of the State of Connecticut has entered an agreement with nine members of the UFF insulation industry to resolve complaints concerning adverse physical effects associated with UFF insulation. The Connecticut agreement also requires manufacturers to provide prospective purchasers with a notice concerning possible adverse health effects associated with UFF insulation. On January 1, 1980, the Connecticut Department of Consumer Protection proposed a regulation to require a health warning in all UFF insulation contracts from all manufacturers.

(3) The Office of the Attorney General of the State of Colorado has issued a warning about potential health hazards to consumers who have purchased UFF insulation. Denver County has adopted a prohibition against the use of UFF in new or existing construction. The Colorado Board of Health held a hearing on UFF insulation on June 18, 1980 as to the advisability of either requiring labeling or banning the product. A member of the State Attorney General's Office testified in favor of an outright ban. The board decided to extend the comment period and proceed with a labeling rule.

(4) On December 18, 1979, the Virginia Department of Health issued a Health Hazard Alert on formaldehyde and UFF insulation.

(5) In several State legislatures, bills have been introduced to require a safety-related disclosure (Maryland), to ban or impose a moratorium on the sale of the product (Arizona, West Virginia, New Hampshire, Maryland), or to set performance requirements limiting formaldehyde emission (California).

In New York and Rhode Island, health-and-safety related disclosures were passed by the legislatures. In Minnesota, the legislature enacted a law

requiring the Commissioner of Health to determine if the use of building materials that emit formaldehyde gas presents a significant health problem. On May 22, 1980, the Commissioner of Health declared that the use of building materials which give off formaldehyde vapor can be a "significant health problem" under certain circumstances. On June 23, 1980, the Commissioner of Health proposed a temporary rule which will establish a maximum limit of 0.5 parts per million (ppm) for the air inside newly constructed dwelling units.

(6) The U.S. Department of Housing and Urban Development (HUD) has issued a Use of Materials Bulletin (#74) that explains the conditions under which HUD will accept UFF insulation and stipulates certain limitations for its use.

(7) On September 25, 1980, the Department of Energy (DOE) issued material and installation standards for UFF insulation under the Residential Conservation Service (RCS) Program established by Title II, Part 1 of the National Energy Conservation Policy Act (NECPA), P. L. No. 96-619 (44 FR 75956).

Active Government Collaboration.

The Commission requested the National Academy of Sciences (NAS) to evaluate available information on the toxicity of formaldehyde and recommend a "tolerable" level, if one exists, for formaldehyde in the home environment. The Commission has received the NAS report and is currently studying the report results.

The Commission is also conducting research with the Department of Energy to help determine why formaldehyde gas is released from UFF insulation and whether there are means of preventing such release. The Commission has also received a completed economic study, conducted by a contractor, concerning the major uses of formaldehyde in consumer products, including UFF insulation. The study also provides an overview of the production of and market for formaldehyde.

The Commission staff has had meetings with the National Association of Urea Foam Insulation Manufacturers, the National Insulation Certification Institute, and the Formaldehyde Institute (including the National Particleboard Association and the Hardwood Plywood Manufacturers Association).

Timetable

Commission Decision on Regulatory Options—November 1980.
ANPRM—To be determined.
NPRM—To be determined.
Regulatory Analysis—The

Commission, as an independent agency, is not required to prepare a Regulatory Analysis as defined under E.O. 12044. However, the Commission prepares essentially the same information in its rulemaking proceedings.

Public Hearings—To be determined.
Public Comment Period—To be determined.

Final Rule—To be determined.

Final Rule Effective—To be determined.

Available Documents

CPSC staff briefing packages dated November 2, 1979, April 23, 1980, and September 2, 1980 are available from the Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, DC 20207.

"Public Hearings Concerning Safety and Health Problems that May Be Associated with Release of Formaldehyde Gas From Urea Formaldehyde (UF) Foam Insulation," 44 FR 69578, December 3, 1979.

"Urea-Formaldehyde Foam Insulation Proposed Notice to Purchasers," 45 FR 39434, June 10, 1980.

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FEDERAL ENERGY REGULATORY COMMISSION

Regulations Governing the Safety of All Water Power Projects and Project Works Licensed Under Part I of the Federal Power Act (18 CFR Part 12*)

Legal Authority

Federal Power Act, 16 U.S.C. § 792a *et seq.*

Reason for Including This Entry

Recent dam failures demonstrate a need for more stringent examination of the structural soundness of project works, and for the establishment of well-conceived plans to protect life and property if a dam is breached. The purpose of this rule is to reassess old and possibly outdated dam safety rules, as recommended by a Presidential review panel and other authorities, and revise them appropriately.

Statement of Problem

Under § 10(c) of the Federal Power Act, the licensee of any water power project within the jurisdiction of the Federal Energy Regulatory Commission

must comply with regulations that the Commission may prescribe "for the protection of life, health, and property."

On December 27, 1965, the Commission's predecessor agency, the Federal Power Commission (FPC), issued Order No. 315, establishing regulations under 18 CFR Part 12 for complete safety inspections of dams and other water-power projects by independent consultants at regular 5-year intervals, or more frequently if necessary. The inspection procedures the FPC established by Order No. 315 were designed to supplement routine precertification inspections supervised by an independent consultant. The FPC chose to apply the inspection requirements to only those licensed projects that have a dam exceeding 35 feet in height above the streambed, or projects with a gross storage capacity of more than 2,000 acre-feet.

These existing dam safety regulations provide only for the 5-year inspection of project structures and equipment, under the guidance of an independent consultant. The inspection provisions, including the consultant's report on the inspection, are general in nature. These regulations make no provision for procedures to be followed by the licensee in the event of an emergency, for warning or safety devices, for periodic testing of spillways, or for other measures that experience has shown to be important for protecting public safety.

This rulemaking accordingly revises these existing 18 CFR Part 12 dam inspection procedures and replaces them with new practices and procedures that encompass dam inspections by independent consultants and other procedures necessary to a successful dam safety program.

This rulemaking also expands the safety regulations to include any dam with a high-hazard potential, as defined by the Corps of Engineers, if the Commission's regional engineer determines that such a dam needs a consultant's inspection. The rulemaking is also intended to improve the quality and efficiency of the Commission's inspections, to improve guidance for the 5 year inspections, to increase use of the dam inspection career training plan, and to make other managerial improvements.

Alternatives Under Consideration

Among various alternatives under consideration are these: Should all dams be subject to the new rules, or only those exceeding a specific height or volume capacity? In addition to dams meeting the specified physical criteria, the Commission is inclined to apply the

rule to other dams which may, for various reasons, have a high-hazard potential. Also under consideration is the cost, benefit, and desirability of a "damage reporting" requirement: for example, should licensees have to report heavy slides on their dikes? If so, within what time period and to which local, State, or Federal agencies? What other kinds of injuries or events might weaken the structure? Should they be reported also?

Summary of Benefits

Sectors Affected: State, municipal, and private hydroelectric power projects within the jurisdiction of the Commission with a gross storage capacity of more than 2,000 acre-feet, or which have a dam with a high-hazard potential or a dam which exceeds 35 feet in height above the streambed; employees at these projects and persons in surrounding communities; independent engineering consulting services; the Commission; and the general public, particularly users of hydroelectric power.

A more comprehensive dam safety program should result in increased public safety. It will help ensure a high degree of quality in the design, construction, and maintenance of water power projects by improving the quality and efficiency of the Commission's inspections. The rulemaking should help increase public confidence in dam safety, and further encourage the development of new hydroelectric projects and the maintenance of existing projects. Hydroelectric power is a reliable and renewable source of energy.

Summary of Costs

Sectors Affected: State, municipal, and private hydroelectric power projects which have potentially high-hazard dams.

The costs incurred under the proposed rulemaking should not be any greater for dams that are now subject to the existing 18 CFR Part 12 regulations. Dams that have never been subject to these regulations—namely, certain high-hazard dams—may incur an additional cost because of the requirement that outside consultants be used in assessing the structural safety of a facility.

Overall, the Commission believes that the proposed regulations should not appreciably increase the costs of dam safety.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

Final Rule—December 1980.

Rehearing Decision—To be determined.

Regulatory Analysis—The FERC is an independent regulatory agency and is not required to prepare the Regulatory Analysis prescribed in E.O. 12044. However, the FERC performs essentially the same analysis for rules of major importance and includes the results in the orders issuing NPRMs and final rules.

Available Documents

Federal Dam Safety Report of the Office of Science and Technology Policy Independent Review Panel, Executive Office of the President, December 6, 1978. Copies of this document are available at the cost of reproduction from the Chief of Federal Dam Safety, Federal Emergency Management Agency, 909 Premier Building, 1725 I Street, N.W., Washington, DC 20472.

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NUCLEAR REGULATORY COMMISSION

Office of Standards Development

Decommissioning of Nuclear Facilities Regulation (10 CFR Parts 30*, 40*, 50*, and 70*)

Legal Authority

Atomic Energy Act of 1955, as amended, § 161, 42 U.S.C. § 2201.

Reason for Including This Entry

The Nuclear Regulatory Commission (NRC) thinks that this rule is important because the NRC expects it will eventually have an annual effect of \$100 million or more on the economy.

Statement of Problem

Decommissioning is the removal or isolation of the radioactive contaminants from a nuclear facility so it can be released for unrestricted use. The purpose of this regulation is to specify requirements for planning and implementing decommissioning to reduce potential radiation hazards to both the public and workers at a facility after the end of its useful life. The regulation will clearly specify NRC requirements for the method, cleanup

criteria, schedule, and financial assurance of decommissioning actions.

Alternatives Under Consideration

The present regulatory approach leaves the choice of decommissioning method, schedule, and financial procedures to the licensee within a loose framework of regulatory criteria. The proposed regulatory approach will carefully specify the decommissioning procedures licensees must follow.

NRC is considering two major alternatives for the method of decommissioning. One is the removal of radioactive constituents by the licensee, allowing unrestricted use of the facility and site, after decommissioning. By unrestricted use, we mean the site is not limited by its previous nuclear use. The other alternative is the permanent isolation of the radioactive components on the site, where small portions of the site will have temporary limited access for public use (depending on radioactive decay times). For facility components that have long-lived radioactive materials (i.e., significant radioactivity for 100 years or more), the latter method is unacceptable, because their isolation cannot be adequately guaranteed. The regulation may provide for delays of varying lengths before decommissioning to allow for reduction of radiation exposure and decommissioning costs.

The advantages and disadvantages of the above two options are detailed and complex, and they are being developed as part of the Generic Environmental Impact Statement which we plan to prepare by January 1981.

The regulation will also consider various methods of paying for decommissioning. While it is generally acknowledged that those who benefit (the users of the power) should pay, the manner and timing of such payment is unclear. Requiring funds before NRC issues a license, while a facility is in operation, at the end of its life, or a combination of these are all viable alternatives.

Summary of Benefits

Sectors Affected: Workers in firms and facilities licensed by the NRC or by States having agreements with NRC to assume certain regulatory responsibilities for nuclear materials and facilities, including approximately 70 nuclear power plants and over 20,000 material licensees, such as firms manufacturing nuclear fuel and radiopharmaceutical supplies, and industries using radioisotopes; and the general public.

At the present time, NRC can characterize the benefits of the regulations only in a qualitative way.

The NRC's systematic and encompassing regulations identify licensing requirements that will ensure the licensee accomplishes decommissioning safely. This will reduce the potential radiation hazards to both the public and occupationally exposed workers. NRC data for a study in progress indicate approximately 253,000 people are monitored.

The following are examples of regulatory particulars that are designed to provide the desired benefits:

(1) Clearly specified decommissioning requirements simplify planning and conduct of decommissioning activities and reduce the need for remedial actions to clean up sites that are found to have been inadequately decommissioned.

(2) NRC design requirements for new facilities that are directed toward facilitating eventual decommissioning can mitigate occupational radiation exposures associated with decommissioning, as well as reduce radiation exposures associated with routine facility operations.

Summary of Costs

Sector Affected: Firms and facilities licensed by the NRC or by States having agreements with NRC to assume certain regulatory responsibilities for nuclear materials and facilities, including approximately 70 nuclear power plants and more than 20,000 material licensees, such as firms manufacturing nuclear fuels and pharmaceutical supplies, and industries using radioisotopes; and users of electricity produced by nuclear power.

The estimated cost of decommissioning a single nuclear power reactor is approximately \$40 million (in 1978 dollars). There are 70 such reactors now operating, and about 100 are under construction or being planned. None of the currently operating reactors is in need of decommissioning in the near future. Although this action would not change the existing responsibility of licensees to decommission, it could require immediate collections from electricity customers to accumulate decommissioning funds. These collections could amount to \$2 million per year for each reactor, or a total amount of \$140 million per year (in 1978 dollars). While the added cost to the consumer would depend on many factors, we estimate this cost to be relatively insignificant and on the order of a tenth of a mill ($\frac{1}{10}$ of a cent) per kilowatt-hour of electricity used. If NRC requires advance collection or surety bonding, rather than collection over the anticipated operating life of the facility,

the economic impact will be to increase further the cost of the electricity that nuclear reactors produce. It is not likely that the change in the cost of electricity will affect the existence of any reactor-owning company. It is possible that additional financial assurance costs could drive smaller nuclear fuel cycle licensees, such as fuel fabricators or uranium mill operators, out of the nuclear business.

The costs of decommissioning and financial assurance for the more than 20,000 material licensees (e.g., radiopharmaceutical suppliers, industrial radioisotope users) are not well established at this time.

Related Regulations and Actions

Internal: NRC action regarding radioactive waste disposal.

External: Environmental Protection Agency standard under development for low-level radioactive residues in the environment.

The Federal Energy Regulatory Commission controls accounting methods and treatment of decommissioning costs by electrical wholesalers.

Internal Revenue Service rulings on tax treatment of funds collected for future decommissioning actions.

State Public Utility Commissions requirements for accumulation of funds for decommissioning.

State Legislatures' passage of laws requiring bonds or other surety for nuclear decommissioning.

Department of Energy program for decommissioning active facilities. (Under development—see Environmental Development Plan (EDP) Decontamination and Decommissioning, July 1978).

International Atomic Energy Agency decommissioning programs.

Active Government Collaboration

We are carrying on active liaison with the States, the Environmental Protection Agency, the Federal Energy Regulatory Commission, the Internal Revenue Service, the Department of Energy, and the International Atomic Energy Agency.

Timetable

Draft Environmental Impact

Statement—November 1980.

Publish Policy Statement—May 1981.

NPRM—September 1981.

Public Hearing—To be determined.

Regulatory Analysis—Although no

Regulatory Analysis is being prepared, the Draft Environmental Impact Statement will contain much of the same information.

Available Documents

NUREG-0436, Rev. 1, Supplement 1, "Plan for Reevaluation of NRC Policy of Decommissioning of Nuclear Facilities," dated August 1980.

NUREG-0278, "Technology, safety and Cost of Decommissioning of Reference Nuclear Fuel Reprocessing Plant," dated October 1977.

NUREG/CR-0130, "Technology, Safety and Costs of Decommissioning a Reference Pressurized Water Reactor Power Station," dated June 1978.

NUREG/CR-0130 (Addendum), "Technology, Safety and Costs of Decommissioning a Reference Pressurized Water Reactor Power Station," dated August 1979.

NUREG/CR-0131, "Decommissioning of Nuclear Facilities—An Annotated Bibliography," dated October 1978.

NUREG/CR-0129, "Technology, Safety and Costs of Decommissioning a Reference Small Mixed Oxide Fuel Fabrication Plant," February 1979.

NUREG/CR-0671, "Decommissioning Nuclear Facilities: A Review and Analysis of Current Regulations," dated August 1979.

NUREG/CR-0569, "Facilitation of Decommissioning of Light Water Reactors," dated December 1979.

NUREG-0590, Rev. 2, "Thoughts on Regulation Changes for Decommissioning," Draft Report, dated August 1980.

NUREG-0584, Rev. 1, "Assuring the Availability of Funds for Decommissioning Nuclear Facilities," Draft Report, December 1979.

NUREG/CR-0570, "Technology, Safety and Cost of Decommissioning a Reference Boiling Water Reactor Power Station," June 1980.

NUREG/CR-0672, "Technology, Safety and Costs of Decommissioning a Reference Low-Level Waste Burial Ground," June 1980.

NUREG/CR-1481, "Financing Strategies for Nuclear Power Plant Decommissioning," June 1980.

All of the above documents are available in the NRC Public Document Room CPDR at 1717 H Street, N.W., Washington, DC for inspection and copying. A charge of 8 cents per page is made for documents copied in the PDR. The NUREG documents are also available by writing to the National Technical Information Service, Springfield, VA 22161.

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NRC—OSD

Disposal of High-Level Radioactive Waste in Geologic Repositories Regulation (10 CFR Parts 2*, 19*, 20*, 30*, 40*, 51*, 60, and 70*)

Legal Authority

Energy Reorganization Act of 1974, §§ 202(3) and (4), 42 U.S.C. § 5842.

Reason for Including This Entry

The Nuclear Regulatory Commission (NRC) thinks that this rule should be included in the **Calendar** because it deals with an important health and safety issue which has great public interest.

Statement of Problem

The Energy Reorganization Act of 1974 gives NRC licensing and regulatory authority over facilities to be built and operated by the Department of Energy (DOE) for the permanent disposal of high-level radioactive wastes (HLW) that have been generated under activities licensed by the Commission or by Government programs. High-level radioactive wastes are the residue from reprocessing spent reactor fuel and spent fuel itself if it is to be disposed without reprocessing.

The intent of this regulation is to provide information to DOE and other interested parties on how the NRC plans to exercise its authority over DOE facilities to be used for the disposal of HLW in prepared cavities deep in the earth. (This method of waste disposal is commonly termed "geologic disposal," and the facility itself is called a "geologic repository.") No regulations or procedures currently exist which address the disposal of HLW.

Specifically, the regulation spells out the procedures DOE should follow in applying for an NRC license for geologic disposal of HLW and the procedures NRC should follow in reviewing that application. It will state the technical criteria the NRC will use in evaluating a DOE application, approving or disapproving a license, and inspecting the placement of the waste within the geologic repository. Specific topics addressed include the suitability of a site and the design and closure of a repository. During the licensing process, the NRC staff will be made available to discuss with representatives of both State and local government opportunities for participation.

Alternatives Under Consideration

This regulation addresses only geologic disposal of HLW. The NRC had considered promulgating a broad regulation to cover other methods which have been suggested for the disposal of HLW, such as placing the wastes on the ocean floor (seabed emplacement), or within a polar ice cap (icesheet disposal). However, neither of these methods appears to be within NRC's jurisdiction, and other potential methods (e.g., transmutation-alteration of the waste to decrease its radioactivity) do not appear to be technically developed yet to the point that rulemaking would be warranted.

The NRC had also considered whether to proceed with rulemaking at this time or to rely on its existing body of regulations in discharging its licensing responsibilities over the disposal of HLW. The NRC has decided to proceed with rulemaking because reliance on existing regulations would neither give proper perspective to the unique problem of geologic disposal of HLW, nor provide the guidance to both the DOE and the public which NRC believes to be necessary to an efficient and publicly accessible licensing process.

Summary of Benefits

Sectors Affected: Industries producing high-level radioactive waste, such as electric services using nuclear power; DOE (including HLW from its research and development, and military programs); State and local governments; and the general public.

Industry would be able to dispose of its high-level radioactive waste permanently in a DOE repository licensed under this regulation. State and local governments would be able to participate in the licensing process under the provisions of this regulation. This regulation would require NRC to make a finding of reasonable assurance that the high-level radioactive waste could be disposed of in a manner that would protect the public health and safety and the environment.

There is a great concern on behalf of the public, State governments, and the Congress that a "safe" method be found for the disposal of HLW. The type of regulation we are proposing should contribute to public confidence by providing an opportunity for public review and comment during the construction, operation, and closure of the repository. Another benefit is that the regulation will serve as a base from which DOE can plan and develop such a facility, hence saving both time and expense in the licensing process.

Summary of Costs

Sectors Affected: Industries producing high-level radioactive waste, such as electric services using nuclear power; DOE (including HLW from its research and development, and military programs); users of electricity produced by nuclear power; and NRC.

Estimated construction and operation costs for a geologic repository range from \$1 billion to \$5 billion (in 1978 dollars). Estimates of the impact on the cost of electricity production vary over a wide range, but are not expected to exceed one mill ($\frac{1}{10}$ of a cent) per kilowatt hour. As many as four repositories may be required to accommodate the HLW that the Government and commercial interests generate by the end of the century. Compliance with NRC's regulations are not expected to alter these costs.

The only costs to produce the regulation are the resources that NRC expends to develop, support, and issue it.

Related Regulations and Actions

Internal: This action is related to an NRC program to classify radioactive waste according to the degree of hazard it presents.

External: This action is related to the Environmental Protection Agency's criteria and standards being developed for the disposal of HLW.

Active Government Collaboration

We have active liaison with the Environmental Protection Agency, the United States Geological Survey, and the Department of Energy.

Timetable

NPRM (Technical Requirements)—December 1980.

Public Comment Period—60 days following publication of NPRM.

Public Hearing—To be determined.

Final Rule (Procedural

Requirements)—December 1980.

Final Rule (Technical Requirements)—

December 1981.

Regulatory Analysis—Not required, but similar material available in NPRM.

Available Documents

Commission Paper—SECY-79-366 (and agenda).

ANPRM, "Technical Criteria for Regulating Geologic Disposal of High-Level Radioactive Waste," 45 FR 31393, May 13, 1980.

Policy Statement—"Licensing Procedures for Geologic Repositories for High-Level Radioactive Wastes," 43 FR 53869, November 17, 1978.

NPRM (Procedural Requirement)—
"Disposal of High-Level Radioactive Wastes in Geologic Repositories; Proposed Licensing Procedures," 44 FR 70408, December 6, 1978.

NUREG-0279—"Determination of Performance Criteria for High-Level Solidified Nuclear Waste," July 1977.

NUREG-0465—"A Classification System for Radioactive Waste Disposal—What Waste Goes Where?" June 1978.

All of the above documents are available in the NRC Public Document Room at 1717 H Street N.W., Washington, DC, for inspection and copying. A charge of 8 cents per page is made for documents copied in the PDR. The NUREG documents are also available for sale by writing the National Technical Information Service, Springfield, VA 22161.

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DEPARTMENT OF EDUCATION

Office for Civil Rights

ED-OCR

Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Education, Effectuation of Title VI of the Civil Rights Act of 1964 (34 CFR 100, Subpart B*)

Legal Authority

Title VI of the Civil Rights Act of 1964, as amended; 42 U.S.C. § 2000d *et seq.*

Reason for Including This Entry

The Department of Education (ED) includes this entry because the proposed rules concern an issue of great public interest—the denial of equal educational opportunities to any student because of that student's limited understanding and use of the English language. The

proposed rules would impose a significant increase in educational costs.

Statement of Problem

In these proposed rules, ED addresses one of the most serious barriers to equal opportunity in education. It proposes standards for teaching students whose primary language is not English and who do not understand or speak English well.

Past educational practices in the United States have resulted in denying many students with limited proficiency in English the equal educational opportunities to which they are legally entitled. Title VI of the Civil Rights Act of 1964 enacts a broad prohibition against discrimination in federally funded programs and provides a legal remedy for this situation.

Shortly after Title VI became law, the Department of Health, Education, and Welfare (HEW) promulgated regulations implementing Title VI (45 CFR Part 80, republished for the Department of Education as 34 CFR Part 100). The regulations were primarily directed toward the elimination of segregation. Among other things, the regulations prohibited practices by recipients that:

(1) resulted in services, financial aid, or other benefits that were different or were provided in a different manner to minority and non-minority people;

(2) restricted an individual's enjoyment of an advantage or privilege enjoyed by others on the basis of race, color, or national origin; or denied an individual the right to participate in federally assisted programs because of race, color, or national origin; or

(3) had the effect of defeating or substantially impairing the objectives of federally assisted programs for persons of a particular race, color, or national origin.

HEW interpreted Title VI and its implementing regulations to prohibit the denial of access to education programs because of a student's limited English proficiency. HEW publicized this interpretation through a guideline, known as the May 25, 1970

Memorandum (35 FR 11595). The United States Supreme Court, in *Lau v. Nichols*, 414 U.S. 563 (1974), unanimously upheld this guideline as an appropriate and permissible interpretation of Title VI.

The *Lau* decision involved approximately 3,000 limited-English-proficient Chinese students enrolled in the San Francisco public schools who were required to attend classes taught exclusively in English. The opinion of the Court noted that the Title VI regulations promulgated by the Department of Health, Education, and Welfare prohibited conduct that had a

discriminatory effect as well as conduct that was intentionally discriminatory.

The Court reasoned that exclusion based upon a characteristic unique to a national-origin minority group had the same effect as an intentional scheme to exclude such a group from a realistic chance to obtain an education.

The number of students with limited proficiency in English is large and growing. Estimates by the National Institute of Education and the National Center for Educational Statistics currently place the number of limited-English-proficient school-age children at more than 3.5 million. The overwhelming majority of these children were born in this country. Of all the limited-English-proficient children in this country, the largest group is Hispanic. The second largest group speaks Asian languages such as Chinese, Korean, Vietnamese, and Cambodian.

Students who do not use English well enough to participate effectively in classes where the language of instruction is English often face difficulties obtaining an appropriate education. These limited-English-proficient students face two main problems. First, they must learn English. Second, while they are learning English, they must have the opportunity to keep pace with their English-speaking classmates who are learning other subjects. Educational practices that do not address these problems impose substantial and unnecessary burdens on these students.

In the past, too many schools have failed to meet the needs of limited-English-proficient students. Students who rely on a language other than English drop out of school at a much higher rate than that of members of their own ethnic, racial, or socioeconomic group who speak English. For Hispanic students who primarily speak Spanish, this drop-out rate is more than three times higher than that of Hispanic students who primarily speak English.

Alternatives Under Consideration.

The *Lau* decision did not prescribe the steps which a school district must take to accommodate students whose English is limited. The Court stated: "Teaching English to the students of Chinese ancestry who do not speak the language is one choice. Giving instruction to this group in Chinese is another. There may be others." (*Lau, supra*, at p. 565). Rulemaking authority is expressly given to agencies with the responsibility to enforce Title VI (42 U.S.C. § 2000d-1).

After the Court rendered its decision, the Department of Health, Education, and Welfare asked experts for advice on assisting limited-English-proficient

students. The result was an HEW policy document, made available in the summer of 1975, entitled "Task Force Findings Specifying Remedies Available for Eliminating Past Educational Practices Ruled Unlawful Under *Lau v. Nichols*." The document was not published in the *Federal Register*, but was distributed widely to school officials and to the general public. This document became known as the *Lau Remedies*.

Consideration was given to publishing the *Lau Remedies* as a rule. The *Lau Remedies* document, however, is not clearly written. Many of its provisions are vague; others are written in highly technical language. Its requirements are hard to follow. Some procedures required by the Remedies are not cost-effective. For example, the provision governing assessment requires all students identified as having a primary or home language other than English to receive an assessment of relative language proficiency. This is an expensive procedure compared to a reading achievement test or a test of oral language proficiency in English.

The proposed rules instruct school districts to compare English reading achievement or oral proficiency scores of children with a primary language other than English with those of non-minority children in the district, or all children in the State, or in the Nation. School districts must classify students scoring below the 40th percentile as limited-English-proficient. ED has considered raising or lowering this eligibility criterion for service in order to raise or reduce the number of students eligible for help. However, most students with a primary language other than English have difficulty in school. For this reason, if ED raised the cutoff score from the 40th percentile to the 50th, far fewer students in the population would be eligible for services than if the test scores of children with a primary language other than English were generally closer to those for children who speak only English.

Because scores for students with a primary language other than English are so low, lowering the cutoff to the 25th percentile also eliminates fewer children than might be expected. However, cost can be lowered by reducing the service population by using a lower percentile rank as a cutoff and raised by increasing it, at least to some extent.

ED made the decision to select the 40th percentile instead of the 25th to assure coverage for those students who would be disadvantaged by being denied the services required by the proposed regulations. ED believed students at the higher percentile rank

could still profit from assistance, and should be included. The proposed rules do not contemplate a "remedial" program, but instead would require schools to provide equality of access to children with language characteristics different from those children who speak only English. ED decided that schools should not curtail help once a student's performance in school and ability to use English becomes only marginal, but that help should continue until the school provides an adequate opportunity for the student to become a fully effective participant.

However, the characteristics of a student scoring at the 40th percentile are so similar to those of students who score at the 50th percentile that an argument that children between the 40th and 50th percentile need special assistance is relatively hard to support. In fact, the standard margin for error of most tests accounts for a substantial portion of the difference in scores between students at the 40th and 50th percentile. Help is no longer essential when a student is able to meet the expectations regarding proficiency which teachers and schools place upon "average" or "ordinary" students. Students who generally meet such expectations are not students whose test scores are precisely at the 50th percentile rank, but are students whose scores will range to some degree between points somewhat below or above the average score.

According to the proposed rules, schools are not required to provide specially tailored services for limited-English-proficient students who are clearly English-superior. The proposed rules simply mandate that English superior students have the same access to compensatory help as other students.

The remaining students—those who are clearly primary-language-superior and those who are comparably limited in English and in their primary language—must receive instruction designed to develop full proficiency in English.

The proposed rules require that primary-language-superior students receive instruction in both languages in all required subjects while the students are learning English.

Two alternatives are presented in the text of the proposed rules to stimulate comment on whether students who are comparably limited in both English and their primary language should also receive instruction in both languages in required subjects. These alternatives are presented because experts disagree about which placement is best for comparably limited students. Some educators argue strongly that students who are comparably limited in two

languages will have a difficult time in a monolingual, English-speaking class. They also argue that the skills that limited-English-proficient students possess in their own language are not necessarily the same as those possessed in English. For example, vocabulary or grammar skills may be different in each language. Others object to this assumption and argue that these students will do better in the long run if their English skills are sharpened by instruction offered exclusively through English.

Summary of Benefits

Sectors Affected: State and local educational agencies; limited-English-proficient students in elementary and secondary schools.

Although quantifying benefits is inherently difficult, information exists on the size of the problem that the proposed regulations address. The largest non-English speaking group in this country is Hispanic. Language characteristics among Hispanics appear to predict the degree of educational success. For example, a 1978 survey showed that among Hispanic people aged 14-30, slightly under 15 percent of those with a Spanish language background who had come to rely on English as their usual language had dropped out of school. For non-Hispanic English speakers with a non-English language background, the non-completion rate was close to that of monolingual English speakers—about 8 percent.

Hispanics who relied primarily on Spanish showed a non-completion rate of 30 percent. Non-Hispanics who relied primarily on their own language had a drop-out rate in excess of 16 percent. While other characteristics also predict academic success or failure, the effect of language characteristics on academic success is substantial. Indeed, family income may not even exert as great an effect as language characteristics. For example, at 150 percent of the poverty level or above, the drop-out rate for Hispanics who relied primarily on Spanish was still substantially higher (close to 20 percent) than for Hispanics who primarily relied on English, regardless of family income.

Demand for bilingual instruction among language-minority people reflects their perception of the failure of the public education system. Course instruction in English has not provided equal access to education. Studies designed to evaluate the general effectiveness of federally funded bilingual programs in the early 1970s showed mixed results (American

Institute for Research, 1977). However, studies of specific bilingual programs have shown that bilingual education can make a substantial difference in educational opportunity.

Summary of Costs

Sectors Affected: State and local educational agencies.

Developing estimates of the total costs to the national economy of goods and services necessary to implement the proposed rules is a complex analytical process. Because of severe limitations on the current availability of precise data, such as information on the number of students in each class of proficiency or numbers of available qualified teachers, ED had to make several assumptions and methodological decisions which affect the preliminary estimates. It is important that ED state these assumptions explicitly so that the uncertainties in the estimates can be understood.

A basic decision was to calculate the total cost of the proposed rules from a base of the current levels of service. The ED estimates reflect the costs of serving all students who would be eligible under the proposed rules and those students who are not currently receiving services. This estimation procedure could underestimate the additional costs of the proposed rules, since it is based on an assumption that all children currently reported as served are receiving services that would meet present legal requirements.

The decision to calculate total costs of the proposed rules from a base of current levels of services could overestimate the cost of the proposed rules by not adequately taking the existing requirements of the Lau Remedies into account. Since full compliance with the Lau Remedies has not yet been achieved, calculations of the total cost of the proposed rules over current levels of services include the cost of coming into full compliance with the Lau Remedies.

Thus, in addition to calculating costs of the proposed rules over current levels of services, we have calculated the cost of full implementation of the Lau Remedies over current levels of service, and the difference in cost between the proposed rules and full implementation of the Lau Remedies.

ED has estimated costs by high and low ranges based on the variables discussed. The range of costs is reported in order to elicit public and expert comment on the assumptions made in determining the costs. It is also hoped that commenters on the proposed rules will suggest additional reliable data

sources and possible improvements in methodology which would serve to narrow the range of the estimates.

ED has presented two alternatives in the text of the proposed rules to stimulate comment on whether limited-English-proficient students who are neither English-superior nor primary-language-superior should receive bilingual subject matter instruction in required subjects. Under the cost estimate in Alternative A, these students would receive instruction designed to improve English language skills but would not be entitled to bilingual subject matter instruction. Under Alternative B these students would also receive bilingual instruction.

TABLE 1.—Summary of the Estimated Average Annual Costs to State and Local Educational Agencies for the Start-up Period (5 Years) and Alternative Options Considered and Rejected.

[Figures rounded in tens of millions of 1980 dollars]

	Cost above current expenditures	Cost over full compliance with the Lau Remedies
Lau Remedies.....	\$190 to \$360.	
Proposed rules (40th percentile of English reading achievement or oral proficiency):		
Alternative A.....	\$180 to \$390.	-\$10 to \$30
Alternative B.....	\$290 to \$590.	\$100 to \$230

This cost analysis presents only start-up costs for the first 5 years. Start-up costs for programs are greater than the costs for continuing programs in place. ED assumes that the major costs of full compliance with either the Lau Remedies or the proposed rules will be met by State and local educational agencies during the start-up period. Greater start-up costs occur because of the need to train teachers and to purchase instructional materials, books, and equipment. During the start-up period it is also necessary to fill in staff shortages with aides that add to regular program costs. These costs should diminish over the longer run, although they are probably not eliminated.

Related Regulations and Actions

Internal: ED regulations under Title VII of the Elementary and Secondary Education Act of 1965, as amended, 45 CFR Part 123 *et seq.* (to be redesignated as 34 CFR Part 550 *et seq.*).

External: The Equal Educational Opportunity Act of 1974 requires that public educational agencies take steps to overcome language barriers impeding equal participation in school programs.

Several States, including California, Texas, Colorado, and Massachusetts, have also enacted laws requiring bilingual educational programs.

Active Government Collaboration

None.

Timetable

Final Rule—To be published after evaluation of public comments.

Available Documents

NPRM—45 FR 52052, August 5, 1980.

Regulatory Analysis—Copies may be requested from the Agency Contact (citations to all statistical studies cited in this entry may be found in the Regulatory Analysis).

Transcripts of hearings and public comments are available at the Department of Education, Room 5409, Switzer Bldg., 330 C St., S.W., Washington, DC.

Agency Contact

David Leeman, Acting Chief
Legal Standards and Policy
Development Branch
Office for Civil Rights
Department of Education
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ED—Office of Elementary and Secondary Education

Financial Assistance to Local and State Agencies To Meet Special Educational Needs; and Financial Assistance to Local Educational Agencies for Children with Special Educational Needs (45 CFR Parts 116 and 116a*, To Be Redesignated as 34 CFR Parts 200 and 201)

Legal Authority

Title I of the Elementary and Secondary Education Act of 1965, §§ 101-198, as amended by P.L. 95-561, 20 U.S.C. §§ 2701-2854.

Reason for Including This Entry

The Department of Education (ED) includes this entry because the proposed rules would govern one of ED's largest programs of Federal assistance to education. This program has an annual effect on the economy of more than \$100 million.

Statement of Problem

The proposed regulations are necessary to implement Title I of the Elementary and Secondary Education Act of 1965 as re-enacted by the Education Amendments of 1978.

Title I authorizes a State-administered grant program that provides financial assistance to:

(1) Local educational agencies (LEAs) for projects designed to meet the special educational needs of educationally deprived children in low-income areas and children in local institutions for neglected or delinquent children.

(2) State agencies for projects designed to meet the special educational needs of handicapped children.

(3) State agencies for projects designed to meet the special educational needs of children in institutions for neglected or delinquent children, or children in adult correctional institutions.

(4) State educational agencies (SEAs) for projects designed to meet the special educational needs of migratory children of migratory agricultural workers or fishers.

The proposed Title I regulations consist of two parts: Part 116 and Part 116a.

Part 116 contains requirements that apply to all Title I grantees and to State and Federal administration of Title I programs. The regulations in Part 116 are supplemented by the regulations in 45 CFR Parts 116a through 116d, which contain requirements peculiar to each of the four categories of Title I programs.

Part 116a applies to Title I projects that are operated by LEAs for educationally deprived children in eligible low-income areas and for children in local institutions for neglected or delinquent children. In addition, Part 116a incorporates provisions from previously published (1) ED interpretive rules concerning the rights of parents to freely elect the members of Title I advisory councils and the amount of funds an SEA must refund to ED if certain requirements are not met; and (2) final regulations for the evaluation of Title I projects by agencies receiving assistance and for Title I concentration grants for LEAs in counties with a high concentration of children from low-income families.

Alternatives Under Consideration

Because ED originally published proposed regulations on June 29, 1979, and these proposed regulations are issued in response to comments received on the original proposed regulations, no major alternatives are now being considered. These regulations (1) follow, in general, the format of the Title I statute; (2) incorporate or paraphrase all major Title I statutory requirements; and (3) include additional or modified standards, criteria, and examples that are required by the Title I statute or are needed to provide clarity.

Summary of Benefits

Sectors Affected: State and local educational agencies; educationally deprived elementary and secondary school students and their parents; and elementary and secondary school teachers and other education employees.

Congress appropriated \$3.2 billion in Fiscal Year 1979 for Title I programs operated in the 1979-1980 school year. Of that total, Congress appropriated \$2.8 billion for Title I grants to LEAs.

In appropriating this sum, Congress recognized the special educational needs of children from low-income families and the impact that concentrations of low-income families have on the ability of LEAs to support adequate educational programs. The Federal financial assistance provided to LEAs serving areas with concentrations of children from low-income families enables them to expand and improve those educational programs which contribute particularly to meeting the special educational needs of educationally deprived children. Financial assistance is also provided to meet the special educational needs of Indian children, of children of certain migrant parents, and of handicapped, neglected, and delinquent children.

Federal funds are used to pay instructional and administrative costs. In addition, the proposed rules provide for teacher, school board, and parent participation in Title I projects.

Summary of Costs

Sectors Affected: State and local educational agencies.

The primary administrative costs stem from the recordkeeping and reporting requirements imposed on State and local educational agencies in order for them to obtain and account for Federal funds. Federal payments are made to reimburse these costs. Some of the requirements, such as the rule against supplanting local effort, may also cause administrative burdens by requiring that LEAs be prepared to demonstrate that the State and local funds currently available for each type of special program are properly allocated. Most of these requirements, however, are imposed by statute. No systematic data is available on the costs of those requirements that are only partially mandated by law.

Related Regulations and Actions

Internal: ED regulations in 45 CFR Parts 116b-116d were published separately and are now in effect as final regulations. Part 116b governs Title I grants to State agencies operating

projects for handicapped children. Part 116c governs Title I grants to State agencies operating projects for neglected or delinquent children. Part 116d governs Title I grants to SEAs operating projects for migratory children.

External: None.

Active Government Collaboration

In addition to considering public comments, ED made special efforts to obtain additional specific suggestions from State and local government officials.

Timetable

Regulatory Analysis—Not required.
Final Rule—December 1980.

Available Documents

NPRM—44 FR 38400, June 29, 1979.
NPRM—45 FR 39712, June 11, 1980.
Individuals interested in reviewing public comments may call or write the Agency Contact listed below.

Agency Contact

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Housing Administration

Coinurance for Private Mortgage Lenders (New Construction) (24 CFR Part 251)

Legal Authority

National Housing Act, § 244.12 U.S.C. § 1715z(9). Department of Housing and Urban Development Act, § 7(d), 42 U.S.C. § 3535(d).

Reason for Including This Entry

The Department of Housing and Urban Development thinks this is an important rule because it sets precedents in providing for increased lender participation in the Federal Housing Administration (FHA) multifamily insurance programs of § 221 of the National Housing Act.

Statement of Problem

Most of the nation's depository financial institutions are reluctant to use FHA mortgage insurance because they feel that a lengthy processing time is required for FHA underwriting analysis.

Coinurance, in which the insured lender bears a share of any loss caused by mortgage default by the borrower, can solve this problem, because it enables HUD to delegate processing to coinsured lenders. They can be trusted to perform underwriting analysis carefully because they bear a risk of loss upon default.

Section 8 new construction or substantial rehabilitation, which is not financed with tax-exempt bonds or with conventional uninsured mortgages, is generally financed under § 221(d)(3) or 221(d)(4) programs for, respectively, nonprofit or profit-motivated mortgagors. The latter is currently the most active FHA-multifamily program.

Alternatives Under Consideration

HUD considered two alternatives to this proposal which it subsequently rejected.

(A) HUD might delegate processing to approved mortgagees that originate mortgage loans with full FHA insurance. This could, however, impose an unacceptable risk on the FHA Insurance Fund, because HUD would then be obligated to pay 100 percent of any loss on these loans (instead of 85 percent under coinsurance) in which the lender and not HUD performed underwriting analysis.

(B) HUD might permit mortgage bankers to originate coinsured § 221 mortgages. To limit HUD's risk exposure, eligible coinsurance originators could be limited to supervised depository lenders, because they have the assets and net worth to absorb a share of coinsurance losses, and they are supervised by Federal or State bank examiners.

Summary of Benefits

Sectors Affected: Savings and loan associations, commercial banks, and savings banks; private rental housing developers; residential building construction; occupants of low- and moderate-income housing projects; HUD; and the general public.

The benefits of this proposal would be:

- (1) Faster processing of FHA § 221 mortgage insurance approvals, benefiting financial institutions and developers.
- (2) Reduced HUD insurance risk exposure (HUD takes 85 percent of loss under coinsurance, instead of full 100 percent).
- (3) An increased source of supply of private mortgage financing for § 221 housing, including § 8—assisted lower income housing, benefiting potential occupants of assisted housing.

(4) Increased availability of housing for the general public.

(5) Increased business for the construction sector.

No additional HUD staff would be required to implement this program.

Summary of Costs

Sectors Affected: Savings and loan associations, commercial banks, and savings banks

This proposal could cause increased risk exposure for lenders because for those mortgages which terminate in default, the lender would assume 15 percent of the loss (basically, unpaid mortgage balance less (a) the amount realized upon resale of the housing project; (b) the lender's share of all FHA mortgage insurance premiums collected from the mortgagor; and (c) the amount of application and insurance commitment fees normally collected by HUD from lenders, because these fees would no longer be charged as the lender would be processing the application with its own staff specialists in property appraisal, mortgage credit analysis, and construction inspection).

Related Regulations and Actions

Internal: HUD already has in operation FHA coinsurance programs for single-family housing, 24 CFR Part 204; and State Housing Finance Agencies multifamily housing, 24 CFR Part 250; and will soon implement a program of FHA § 223(f) coinsurance under 24 CFR Part 255.

External: Unknown.

Active Government Collaboration

The Federal Home Loan Bank Board has provided informal advice and comments in the drafting of this proposed rule.

Timetable

NPRM—November 1980.
Draft Regulatory Analysis—Available with NPRM.
Comment Period—60 days following NPRM.
Final Rule—July 1981.
Final Regulatory Analysis—Will accompany final rule.
Public Hearings—None planned.

Available Documents

None.

Agency Contact

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HUD—Office of the Assistant Secretary for Housing**Minimum Property Standards for One- and Two-Family Dwellings (24 CFR Part 200, Subpart S)****Legal Authority**

National Housing Act, § 211, 12 U.S.C. § 1715(b).

Reason for Including This Entry

The Department of Housing and Urban Development (HUD) thinks this rule is important because it is an initial effort to reduce unessential regulations, incorporate model code standards, and minimize the bulk of the current Minimum Property Standards.

Statement of Problem

HUD now imposes Minimum Property Standards on the construction of one- and two-family dwellings insured or assisted by HUD funds. Some 300,000 units a year are subject to these standards. The standards are set for the health and safety, marketability, durability, liveability, and workmanship of these dwellings. Over the years, these standards have increased in length and complexity, due to the continuing review and revision of the standards to conform to up-to-date building practices. Unfortunately, this has made the standards harder to use by builders, who must maintain a familiarity with a more lengthy document, and a streamlining of the standards is now appropriate. HUD's Housing Cost Task Force identified several aspects of the minimum property standards, such as conformity with model building codes and elimination of unessential "livability" standards, which, if changed, might improve the affordability of housing without substantially lowering the construction quality of the housing affected (i.e., housing with FHA mortgage insurance or HUD-assisted units). For these reasons, HUD is proposing a revision to delete redundant, obsolete, and unnecessary requirements. Appropriate parts of the model one- and two-family dwelling code are also being incorporated.

Alternatives Under Consideration

Alternative A would be to make no change in the present standards. This would save administrative effort but has no other advantage. On the other hand, if we do not revise the standards, they will become more obsolete through time, and present undue compliance costs will be perpetuated. Therefore, we are considering the following alternatives:

Alternative B would be to replace the Minimum Property Standards with the

model one- and two-family dwelling code. While this would reduce compliance costs to builders, we are concerned that this drastic step should be undertaken only after careful study and consideration of the implications. We are studying additional ways to make the minimum property standards conform to the model code, but until these studies are completed and evaluated, we feel alternative B is premature.

Alternative C is to move toward simplification of the Minimum Property Standards by deleting standards we consider unnecessary and revising the sections of the standards that in our judgment can safely be simplified at this time, while retaining those standards which we feel are necessary to ensure the health and safety of the occupants. Alternative C is the alternative that HUD has selected in this rulemaking procedure.

Summary of Benefits

Sectors Affected: Residential building construction and construction workers; public and private developers of housing programs; occupants and owners of minimum standard housing, especially FHA-insured housing; and the mortgage banking industry;

Although Minimum Property Standards govern all FHA housing, FHA-eligible dwellings are often built to standards higher than those required by the Minimum Property Standards. In such cases, the standards are not binding and lowering them will have no effect. We expect, however, that the impact of these changes would be felt throughout the construction industry generally, because they would promote lower building costs, ultimately reducing the purchaser's outlay. Our Draft Regulatory Analysis attempted to come to grips with the potential cost savings, but accurate estimates are not available, since obtaining such estimates would require a large survey to determine which standards are binding, and what the impact of lowering these standards would be. Qualitatively, to the extent that cost savings are realized, the amount of new housing produced will increase, and this would generate indirect benefits in the form of construction employment and increased mortgage activity for the banking industry. Also, the standards are picked up by a number of local building codes, and for this reason, changes in the standards should have an impact beyond FHA-insured and HUD-assisted housing alone.

The Draft Regulatory Analysis estimated the maximum benefit in terms

of a maximum direct cost saving of \$61.5 million per year (1979 dollars), such saving consisting of potential lowered construction costs. The likely impact is considerably less than this, in that this estimate assumed all dwellings currently constructed at the lower end of the quality scale would adopt the lower allowed standards. Of course, some of these units would not fully exploit the potential cost savings, because builders might consider a higher quality unit more marketable.

Summary of Costs

Sectors Affected: Residential building construction; occupants and owners of minimum standard housing; and HUD.

The purpose of the Minimum Property Standards is to ensure units of housing which are decent, safe, and sanitary, and which conform to good building practice. This protects the home buyer by assuring the unit is built to (at least) a minimum quality level, and provides a basis for FHA mortgage insurance, so that if a mortgage defaults, there is a high probability that the value of the property will exceed the principal balance on the loan. Most of the costs associated with the proposed changes are in the form of what we consider a small additional risk of lower quality units being built. There are administrative costs involved in issuing a new regulation, and builders will have to become familiar with a new set of standards, even though the standards are simplified compared to the existing ones. It is felt, however, that these costs are small, and more than likely to be offset by future cost savings.

Related Regulations and Actions

Internal: None.

External: Local Building Codes.

Active Government Collaboration

None.

Timetable

Public Hearings—None planned.
Public Comment Period for NPRM—
Ends November 15, 1980.
Final Rule—To be published
approximately July 1981.

Available Documents

NPRM—September 15, 1980; 45 FR 62316.

Draft Regulatory Analysis.
Environmental Impact Statement, July 1980.

Available from Rules Docket Clerk,
Room 5218 at address below.

Agency Contact

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DEPARTMENT OF JUSTICE

Civil Rights Division

Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs (28 CFR 42.401 et seq.)

Legal Authority

E.O. 12250 (45 FR 72995, November 4,
1980).

Reason for Including This Entry

The Department of Justice (DOJ)
includes this entry because it concerns a
matter of great public interest.

Statement of Problem

The changes DOJ proposes are the
result of responsibilities placed on the
Attorney General by the President when
he issued Executive Order 12250 on
November 2, 1980. That Order charged
the Attorney General with responsibility
for coordinating the implementation and
enforcement of Title VI of the 1964 Civil
Rights Act, 42 U.S.C. § 2000d et seq.;
Title IX of the Education Amendments
of 1972, as amended, 20 U.S.C. § 1681 et
seq.; § 504 of the Rehabilitation Act of
1973, as amended, 29 U.S.C. § 794; and
all other provisions of Federal statutory
law which prohibit discrimination on the
basis of race, color, national origin,
handicap, religion, or sex in federally
assisted programs.

Title VI prohibits discrimination on
the basis of race, color, or national
origin in programs or activities receiving
Federal financial assistance.

Title IX prohibits discrimination on
the basis of sex in education programs
receiving Federal financial assistance.

Section 504 prohibits discrimination
on the basis of handicap in federally
assisted and federally conducted
programs.

Each Federal agency empowered to
extend such assistance is primarily
responsible for enforcing Title VI, Title
IX, § 504, and other statutes prohibiting
discrimination on the basis of race,
color, national origin, religion, handicap,
or sex as they relate to their activities.

Under Executive Order 12250, issued
November 2, 1980, the Attorney General
is charged with the responsibility for:

(1) developing standards and
procedures for taking enforcement
actions and for conducting
investigations and compliance reviews;

(2) issuing guidelines for establishing
reasonable time limits on efforts to
secure voluntary compliance, on the
initiation of sanctions, and for referral to
the Department of Justice for
enforcement where there is
noncompliance; and

(3) establishing guidelines and
standards for the development of
consistent and effective recordkeeping
and reporting requirements and for
datasharing among agencies.

These specific responsibilities as they
relate to the statutes covered by the
Order are new and were not specifically
set out in any previous Executive Order
applicable to the Attorney General.

The proposed regulations implement
the directives of the President as set
forth in Executive Order 12250.

Alternatives Under Consideration

The principal alternative of taking no
action would not be responsive to the
Executive Order.

Summary of Benefits

Sectors Affected: The Federal
Government; minorities; handicapped
individuals; women; and the general
public.

We expect that these proposed rules
will result in a more efficient use of
Federal executive agency civil rights
personnel. The rules place time limits on
how long investigation of alleged civil
rights noncompliance may last and how
long voluntary negotiations between an
agency and recipient may continue
before the agency determines whether
voluntary compliance is possible or
formal enforcement action is necessary.
As a result civil rights investigations
should be resolved more quickly. In
addition, because they provide that civil
rights compliance decisions are subject
to the approval of agency civil rights
offices, whose staffs are trained in civil
rights requirements, decisions should be
more consistent and made more
promptly.

As a result, recipients, minorities,
women, handicapped individuals, and
the public can expect that civil rights
problems will be dealt with in a more
predictable and efficient manner.

Summary of Costs

Sectors Affected: None.

This proposal allows for the more
efficient use of existing staff and,
therefore, no additional personnel costs
are expected in the immediate time
period after its adoption. Additional
costs may be incurred by agencies as
they use these procedures to enforce
Title IX, § 504, and other statutes
covered by the Order. However, it is

impossible to say that, if any, additional
costs may be incurred.

Related Regulations and Actions

Internal: These proposed rules will
require the amendment of regulations
entitled "DOJ Nondiscrimination in
Federally Assisted Programs—
Implementation of Title VI of the Civil
Rights Act of 1964," 28 CFR 42.101 et
seq.

External: These proposed rules will
require the amendment or issuance of
regulations implementing Title VI, Title
IX, § 504, and other statutes which
prohibit discrimination on the basis of
race, color, national origin, handicap,
religion, or sex by the following
agencies: ACTION; Agency for
International Development (AID);
Department of Agriculture (DOA); Civil
Aeronautics Board (CAB); Department
of Defense (DOD); Department of
Commerce (DOC); Department of
Education (ED); Equal Employment
Opportunity Commission (EEOC);
Environmental Protection Agency (EPA);
Federal Home Loan Bank Board
(FHLBB); General Services
Administration (GSA); Department of
Health and Human Services (HHS);
Department of Labor (DOL); Department
of Housing and Urban Development
(HUD); Department of the Interior (DOI);
Department of the Treasury (Treasury);
National Aeronautics and Space
Administration (NASA); National
Endowment for the Arts (NEA); Nuclear
Regulatory Commission (NRC); National
Science Foundation (NSF); Office of
Personnel Management (OPM); Small
Business Administration (SBA);
Department of State (DOS); Department
of Transportation (DOT); Tennessee
Valley Authority (TVA); Water
Resources Council (WRC); and Veterans
Administration (VA).

Active Government Collaboration

In 1979, we proposed the concepts set
forth in the proposed rules, as they
relate to Title VI, by letter or in
meetings, or both, with ACTION,
Agency for International Development,
Department of Agriculture, Civil
Aeronautics Board, Department of
Defense, Department of Commerce,
Department of Education, Department of
Energy, Environmental Protection
Agency, Federal Home Loan Bank
Board, General Services Administration,
Department of Health and Human
Services, Department of Housing and
Urban Development, Department of the
Interior, Department of Labor, National
Aeronautics and Space Administration,
National Endowment for the Arts,
Nuclear Regulatory Commission,
National Science Foundation, Office of

Personnel Management, Small Business Administration, Department of State, Department of Transportation, Tennessee Valley Authority, Water Resources Council, Veterans Administration, Equal Employment Opportunity Commission, International Communications Agency, National Endowment for the Humanities, Community Services Administration, and Office of Management and Budget.

Additional consultation with affected agencies will take place prior to final issuance of the proposed rules as required by Executive Order 12250.

Timetable

NPRM—December 1980/January 1981.
Regulatory Analysis—Not required.
Public Hearing—None.
Public Comment Period—Minimum of 90 days following publication of NPRM.
Final Rule—May/June 1981.
Final Rule Effective—Upon publication.

Available Documents

E.O. 12250, 45 FR 72995, November 4, 1980.
28 CFR 42.401–415.
42 U.S.C. § 2000d *et seq.*
20 U.S.C. § 1681 *et seq.*
29 U.S.C. § 794.
"Agencies When Providing Federal Financial Assistance Should Ensure Compliance With Title VI," General Accounting Office (GAO), April 15, 1980. Available from GAO, publication number HRD-80-22.

Agency Contact

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DOJ-CRD

Regulations Prohibiting Discrimination on the Basis of Age in Federally Assisted Programs

Legal Authority

Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*; Health, Education, and Welfare (now Health and Human Services) Government-Wide Age Discrimination Regulations, 44 FR 33768, June 12, 1979.

Reason for Including This Entry

The Department of Justice includes this entry because it concerns an issue of great public interest. This proposed regulation is intended to eliminate discrimination on the basis of age against persons participating or

attempting to participate in DOJ-assisted programs.

Statement of Problem

A substantial number of people in the United States are denied full participation in major activities, such as public benefits, services, and facilities, because of discrimination based on their age. Recognizing this fact, the Congress passed the Age Discrimination Act of 1975, which prohibits discrimination solely on the basis of age in all programs and activities that receive Federal financial assistance. Federal agencies that provide such assistance must develop and publish regulations in furtherance of the broad remedial purpose of the Age Discrimination Act of 1975.

Alternatives Under Consideration

In furtherance of its statutory authority, the Department of Health and Human Services (HHS) has required each Federal department or agency to issue regulations that are consistent with the Federal-wide regulations promulgated by HHS. Section 90.31(c) of 45 CFR (44 FR 33768, June 12, 1979) requires each Federal department or agency to submit its final regulation to HHS for review no later than 120 days after publication of proposed age discrimination regulations. Accordingly, there are no alternatives to the standards that HHS has published (44 FR 33768, June 12, 1979) in terms of scope, timing, or substantive requirements obligating recipients of Federal assistance from the Department of Justice.

Summary of Benefits

Sectors Affected: Approximately 9,000 units of State and local governments that are involved in law enforcement and related activities; approximately 1,000 private entities, such as juvenile homes, educational institutions, and public interest groups that participate in activities related to the Nation's criminal justice system; and individuals eligible to take part in their programs.

The regulations will establish standards to define and prohibit age discrimination in programs and activities that receive Federal financial assistance from DOJ. Programs and activities that the regulation would cover include those administered by State and local units of the criminal justice system that receive Federal assistance in the form of grants and Federal assistance contracts from the Law Enforcement Assistance Administration (e.g., police departments, prisons, courts), or training from the

Federal Bureau of Investigation or other agencies within DOJ.

Summary of Costs

Sectors Affected: Approximately 9,000 units of State and local governments that are involved in law enforcement and related activities; approximately 1,000 private entities, such as juvenile homes, educational institutions, and public interest groups that participate in activities related to the Nation's criminal justice system; and individuals eligible to take part in their programs.

We cannot provide estimates of compliance costs although at present it appears that the compliance cost of the regulation will not result in major economic consequences within the meaning of E.O. 12044. We considered the appropriateness of a Regulatory Analysis and determined that no such analysis is necessary. We invited public comment on this issue.

Related Regulations and Actions

Internal: None.
External: HEW (now HHS) general regulations under the Age Discrimination Act, 44 FR 33768, June 12, 1979.

Active Government Collaboration

Pursuant to 42 U.S.C. Section 6103(a)4, the proposed regulation was sent to the Secretary of Health and Human Services for review.

Timetable

Final Rule—February 1981.
Regulatory Analysis—None.

Available Documents

NPRM—45 FR 32710, May 19, 1980.
Public Comments—Available for review, see Agency Contact.

Agency Contact

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DOJ-CRD

Regulations Prohibiting Discrimination on the Basis of Sex in Education and Training Programs Receiving Federal Financial Assistance (28 CFR Part 42*)

Legal Authority

Education Amendments of 1972, as amended, Title IX, §§ 901 and 902, 20 U.S.C. § 1681 *et seq.*

Reason for Including This Entry

The Department of Justice (DOJ) includes this entry because it deals with a matter of public concern. These regulations would prohibit discrimination on the basis of sex in education programs and activities receiving financial assistance from DOJ.

Statement of Problem

In June 1980, the Department of Justice proposed a new regulation for nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance. We intended the June proposal to implement Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.*, which prohibits (with certain exceptions) sex discrimination in federally assisted education programs or activities.

The proposed rule and request for comments were published in the *Federal Register* on June 17, 1980, (45 FR 41001), and parties were given 60 days from that date in which to file comments. The Department was asked by several interested groups to extend the comment period, and by notice published in the *Federal Register* on August 18, 1980 (45 FR 54770) extended the comment period to September 19, 1980.

The Department has received a number of requests for an additional extension of the comment period. The Department believes that major issues of public concern have been raised in the comments already received and that additional comments on the June 17 proposal would be redundant. The comments received to date have indicated a belief that coverage of recipients that receive Federal financial assistance indirectly would significantly extend the application of Title IX to private schools, including religious schools. We do not intend such an expansion of coverage, and we do not believe that the June 17 proposal would have had that effect. Nevertheless, the Department recognizes its responsibility to respond to the concerns expressed by making it clear that the regulation will not significantly expand coverage of private schools. Therefore, we will publish a clarified version of the proposed regulation in the near future, and interested parties will have a period of 90 days to comment on it. The requests for extension of the comment period on the June 17 proposal were therefore denied, but the public will have an additional opportunity to comment before the regulation is drafted for final publication.

Alternatives Under Consideration

The Department of Justice had two possible alternatives to choose from in designing this congressionally mandated regulation: it could have followed the directions provided by the other Federal agencies, the Department of Health, Education, and Welfare (HEW), (now the Department of Education) and the Department of Agriculture (USDA), which have already issued their Title IX regulations; or it could have developed an entirely new approach to Title IX enforcement, ignoring the work performed by other agencies. The Department of Justice is following the leads of HEW and USDA in order to ensure consistency in the Federal Government's approach to enforcing Title IX.

Summary of Benefits

Sectors Affected: All education programs and activities receiving or benefiting from Federal financial assistance.

This regulation will clarify prohibited discrimination on the basis of sex in access to education and training programs and in fringe benefit plans sponsored by recipients receiving assistance from DOJ. Viewed from a larger perspective, implementation of the regulation will upgrade the quality of law enforcement and related activities by ensuring equal access to education and training programs regardless of sex. Specifically, it will improve the ability of women who have traditionally been discriminated against by the employment practices of law enforcement agencies to obtain equal access, once hired, to those activities needed for professional advancement.

Summary of Costs

Sectors Affected: State and local law enforcement and correction agencies; and private entities participating in activities related to the Nation's criminal justice system, such as juvenile homes, educational institutions, and public interest groups.

We cannot provide precise estimates of compliance costs at this stage; however, they appear to be minimal. We do not believe that the compliance costs associated with this regulation will have any major economic consequences within the meaning of E.O. 12044.

Related Regulations and Actions

Internal: DOJ regulation issued by the Law Enforcement Assistance Administration under the authority of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42

U.S.C. § 3789d(c) *et seq.* This law, which contains a general prohibition against sex discrimination, has been reenacted in the Justice System Improvement Act of 1979, P.L. 96-157, and is implemented by 28 CFR 42.201-.217.

External: HEW regulation 45 CFR Part 86, USDA Regulation, 44 FR 21610, April 11, 1979.

Active Government Collaboration

At the time of development of the regulation no Federal agency had been delegated overall responsibility for coordination enforcement of Title IX. However, DOJ has attempted to make its regulation consistent with those already published by the Department of Health, Education, and Welfare and the U.S. Department of Agriculture.

Timetable

Second NPRM—December 1980.
Public Comment Period—90 days following publication of NPRM.
Regulatory Analysis—Not required.

Available Documents

NPRM—June 17, 1980, 45 FR 41001.
Comments received on the June 17 proposal will remain available for public inspection in Room 412, 521 12th Street, N.W., Washington, DC, between 9:00 a.m. and 5:30 p.m., Monday through Friday, except on Federal holidays, until the rule is published in final form.

Agency Contact

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Civil Rights Division
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DOJ—Immigration and Naturalization Service**Admission of Refugees and Asylum Procedures (8 CFR Parts 207 and 208)****Legal Authority**

Refugee Act of 1980, P.L. 96-212, 94 Stat. 102.

Reason for Including This Entry

These proposed regulations will set a precedent for U.S. programs providing relief for the increasing numbers of refugees seeking haven in the United States. The refugee problem has generated worldwide attention and is of major concern to the United States and its citizens.

Statement of Problem

The Refugee Act of 1980 is a major departure from prior legislation which provided relief for refugees. It

establishes a permanent and systematic procedure for meeting these humanitarian needs. Prior statutory provisions have proven to be inadequate because of the lack of uniformity in treating refugees from different parts of the world. The Immigration and Naturalization Service must adopt regulations to implement the provisions of the new Act.

The proposed regulations provide that the Immigration and Naturalization Service accomplish the following specific responsibilities: determine who qualifies as a refugee; establish asylum procedures; adjust the status of refugees; establish procedures for inspection and examination of refugees; waive certain exclusionary grounds for admitting refugees; develop regulations for procedures to terminate the status of those who no longer qualify as refugees; and admit refugees into the United States, subject to numerical limitations established by the President after appropriate consultation with Congress. In addition, the regulations also specify procedures for the Immigration and Naturalization Service to inform aliens, other governmental agencies, and the public as to who may qualify as a refugee, and the methods and procedures for refugees to apply for the benefits which the act provides.

Alternatives Under Consideration

Because of certain retroactive provisions in the Refugee Act of 1980, and the short time frame within which to develop regulations, the Service decided to publish interim regulations on June 2, 1980 (45 FR 37392) to meet these exigent circumstances. The nature of the problem we are faced with—emergency relief for human suffering—argues against a prolonged deliberative process to weigh innumerable alternatives before deciding upon a course of regulatory action. Fine tuning of the regulations can be done at a later date in the form of final regulations after opportunity for public comment, and experience we gain with the interim regulations.

Summary of Benefits

Sectors Affected: Refugees; Federal agencies, such as Department of State, Education, Health and Human Services, and Labor, and the Public Health Service; international organizations; foreign governments; State governments; others involved in refugee relief and resettlement; and the general public.

Until the refugees are absorbed into the economy and contribute to the Nation's gross national product through

their labor and services, they will place a burden upon public agencies.

Summary of Costs

Sectors Affected: Federal agencies, such as Departments of State, Education, Health and Human Services, and Labor, and the Public Health Service; international organizations; State governments; and others involved in refugee relief and resettlement.

As the number of refugees admitted increases because of the new liberalized admission trend reflected in the Act, the workload of the Federal agencies, public and private agencies, and charitable organizations will increase proportionately. The need for financial and medical assistance for the refugees will fall upon various Federal and State agencies responsible for public health and welfare. Private and voluntary organizations which provide services not available from public agencies will also have increased operating costs. While we are unable at this time to place a dollar value on the cost to all sectors affected by the Act our experience in FY 1979 indicates that about 108,000 refugees were admitted into the United States by the Immigration and Naturalization Service. We believe the total will be about 225,000 for FY 1980.

Related Regulations and Actions

Internal: Existing regulations dealing with asylum (8 CFR 108) adjustment of status (8 CFR 245) and other references in various subsections in Title 8, Chapter I of the regulations will be affected by the new interim regulations, and we will amend them as necessary.

External: While other Federal agencies are also affected by the Act, it is not certain at this time what revisions they must make to their regulations to conform them to the Immigration and Naturalization Service's interim regulations.

Active Government Collaboration

Operating units of the Immigration and Naturalization Service have been in contact with the Departments of State, Labor, Education, and Health and Human Services because of the mutual areas of responsibility each shares under the Act.

Timetable

Final Rule—Late 1981.

Regulatory Analysis—Not required.

Available Documents

Interim Regulations—45 FR 37392, June 2, 1980.

Refugee Act of 1980, P.L. 96-212 (94 Stat. 102).

Available from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 at \$1.50 per copy.

Senate Conference Report 96-590, Refugee Act of 1980. Available from Senate Document Room, U.S. Capitol, Washington, DC 20510 (no cost).

Agency Contact

For questions on asylum procedures for refugees:

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Washington, DC 20536
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For questions on admission of refugees:

John Z. Rebsamen, Director Office of Refugee and Parole Immigration and Naturalization Service
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For questions on adjustment of status of refugees:

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DOJ-INS

Employment Authorization (8 CFR Part 109)

Legal Authority

Immigration and Nationality Act, 8 U.S.C. §§ 1103 and 1255(c).

Reason for Including This Entry

The Immigration and Naturalization Service thinks this rule is important because the various subsections, Service policy, and standards relating to employment authorization for aliens will be codified under one new part. In the existing regulations, employment authorization and revocation of employment authorization were discretionary with the district directors of the Immigration and Naturalization Service. The new regulations will clearly specify the classes of aliens eligible to work upon admission into the United States and those aliens who will require administrative authorization to work. The regulation also impacts upon the

Social Security Act and related labor laws.

Statement of Problem

Immigration and Naturalization Service procedures for granting employment authorization to aliens are based on the Attorney General's authority under 8 U.S.C. § 1103, which charges him with the administration and enforcement of the immigration and nationality laws. 28 CFR 0.105 delegates this authority and responsibility to the Commissioner of Immigration and Naturalization. A 1976 amendment to the Immigration and Nationality Act bars adjustment of status of any alien (other than an immediate relative of a U.S. citizen) who after January 1, 1977 engages in unauthorized employment prior to filing an application for adjustment of status.

Implementation of the amendment to the law resulted in numerous revisions to the Immigration and Naturalization Service's regulations and instructions, determinations of work eligibility on a case-by-case basis, and discretionary grants of employment authorization based upon the financial necessity of the alien. To ensure a more uniform application of the Immigration and Naturalization Service's policies in this area, we need clearly defined criteria for granting employment authorization to specific classes of aliens. We should consolidate numerous policy guidelines into one ready reference.

On July 25, 1979, the Immigration and Naturalization Service published regulations in the *Federal Register* (44 FR 43480) to codify the body of procedures and criteria which it had already developed through experience with granting employment authorizations. The proposed regulations would require nonimmigrant aliens to continue complying with existing regulations relating to employment for their particular nonimmigrant status. Other aliens would apply to the district directors of the Immigration and Naturalization Service for discretionary grants of employment authorization based upon establishing financial necessity for employment or presumable qualification for some type of permanent status in the United States.

In view of the comments we received from interested persons, the Immigration and Naturalization Service has significantly modified its proposed rule by specifically setting out those classes of aliens who are authorized to be employed in the United States as a condition of their admission without specific authorization from the Service. The new proposed rule also clearly

describes the classes of aliens who may apply for discretionary work authorization based upon their financial needs caused by subsequent changes in circumstances. Lastly, the proposed rule defines the criteria to be used by the Immigration and Naturalization Service district directors and the uniform procedures they must follow in revoking previously granted discretionary work authorizations. We published this new proposal in the *Federal Register* on March 26, 1980 (45 FR 19563), and the public had 60 days to submit their comments.

Alternatives Under Consideration

We originally conceived this as a consolidation of existing procedures; however, in view of the public comments received and the significant issues raised, we are considering making substantive changes. At this time, proposing alternative actions would be premature.

Summary of Benefits

Sectors Affected: Aliens; industries employing aliens, including the medical profession, nursing profession, and other skilled labor professions; the Service; Federal agencies such as the Departments of Labor and State, and the Social Security Administration; State and local governments; charitable organizations; others requiring classification of an alien's employable status; and the general public.

This rule will not only benefit aliens entering the United States but also will benefit the general public. Definable classes of aliens will be employable without delay and employers will know what classes of aliens can be legitimately employed without requiring proof of work authorization from the Immigration and Naturalization Service. The regulation will also clarify for employers what class of alien is covered under the Social Security Act and Federal labor laws, as social security coverage and labor law protection of workers are dependent upon the alien's classification and whether or not he/she is legitimately employable. The Immigration and Naturalization Service will benefit because this proposal will generate information which will forestall many individual inquiries from employers, other Government agencies, and charitable organizations requesting classification of an alien's employable status. Agencies such as the Departments of Labor and State and the Social Security Administration will benefit by the clearly defined employment status of aliens because their regulations also impact upon

defining eligibility for visas and benefits.

Summary of Costs

Sectors Affected: None.

Related Regulations and Actions

Internal: This regulation codifies the numerous interpretations and policies of the Service relating to work authorization which were spread throughout Chapter I of the regulations and the Immigration and Naturalization Service's Operations Instructions.

External: Related regulations of the Departments of Labor and State and the Social Security Administration will be affected by the proposed regulations.

Active Government Collaboration

The Immigration and Naturalization Service expects to receive comments from the Departments of Labor and State and the Social Security Administration in formulating the final rule because of the interaction of responsibilities in the alien employment area. We anticipate that these agencies also will amend their regulations to clarify the status of employable aliens who are entitled to benefits under the various agencies.

Timetable

Revised NPRM—November 1980.
Regulatory Analysis—Not required.

Available Documents

NPRM—45 FR 43480, July 25, 1979.
NPRM—45 FR 19563, March 26, 1980.
All documents available for review in the Public Reading Room, Room 5037, Immigration and Naturalization Service, 425 Eye Street, N.W., Washington, DC 20536.

Agency Contact

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DOJ—Office of Justice Assistance, Research, and Statistics—Law Enforcement Assistance Administration

Equal Service Evaluation Guidelines (28 CFR Part 42*)

Legal Authority

Justice System Improvement Act of 1979, 42 U.S.C. § 3782(a) *et seq.*

Reason for Including This Entry

The Office of Justice Assistance, Research, and Statistics (OJARS)

believes that these guidelines are important because they will help it assure that State and local criminal justice agencies do not discriminate in the delivery of services to the public, and will help the agencies spot and correct discriminatory practices without the need for Federal action.

Statement of Problem

OJARS, the Law Enforcement Assistance Administration (LEAA), the National Institute of Justice (NIJ), and the Bureau of Justice Statistics (BJS) award grants to support improvements in all parts of the criminal justice system—police, corrections, courts, probation, parole, prosecution, defense, and juvenile justice agencies.

The nondiscrimination provision of the Justice System Improvement Act of 1979, 42 U.S.C. § 3879d(c)(1), states that no person may be "excluded from participation in, . . . denied the benefits of, . . . subjected to discrimination under or denied employment in connection with" any program or activity supported by funds made available under the Act on the basis of race, color, religion, national origin, or sex. The Act requires OJARS to take rapid action to end assistance to recipients who practice such discrimination.

The OJARS Office of Civil Rights Compliance (OCRC) investigates complaints of discrimination and, even in the absence of a complaint, conducts "compliance reviews" of its recipients. OCRC has received an increasing number of complaints alleging discrimination in the services that criminal justice agencies provide to minority groups and women. Complaints may range from a police department's failure to respond to calls for assistance from a minority neighborhood to a department of corrections' failure to provide the same "halfway house" facilities for women that it does for men. OCRC has also sought to focus more compliance reviews on recipients' efforts to serve their communities equitably. In attempting to investigate these complaints and conduct these reviews, however, OCRC has found that recipients do not maintain the information necessary to permit OJARS to make a determination of compliance or noncompliance. As a result, OJARS cannot fully implement the nondiscrimination provision in the services area.

Alternatives Under Consideration

There are three alternative methods of addressing the problem. OJARS could:

(A) establish a guideline broad enough to inform each category of

criminal justice recipient (e.g., police agency, court, corrections department) of the type of information OJARS would need to review to determine compliance with 42 U.S.C. § 3879d(c)(1);

(B) implement an ad hoc method of collecting information tailored to each recipient that OJARS would establish after it initiated its complaint investigation, or compliance review, of the recipient; or

(C) decide not to investigate complaints of discrimination in services, or to close all such investigations for "insufficient data."

Options (B) and (C) would do little to assist OJARS in eliminating discrimination in services from the criminal justice system. Option (B) would also be too time-consuming and impractical to administer for the 20 persons who comprise OCRC's staff. We cannot obtain the information from another Federal agency because no other agency collects the type of data OJARS needs for review.

Option (A) is the only alternative that would effectively assist OJARS in implementing the nondiscrimination provision of the Justice System Improvement Act. Administered properly, it would assure OJARS that the information it needed to evaluate a complaint of discrimination would be available for review, and would enable the recipient criminal justice agency to quickly and effectively rebut a false charge. The guideline will also be a useful self-examination tool for criminal justice agencies seeking to voluntarily curb discrimination that they might not have previously recognized.

Summary of Benefits

Sectors Affected: State and local criminal justice agencies; members of the public served by those agencies, particularly inmates of correctional institutions, persons on probation, parolees, and juveniles found to be delinquent by a court; and OJARS.

The proposed guideline will:

1. greatly improve OJARS' ability to assure that recipients of its funds are not in violation of the nondiscrimination provision of the Justice System Improvement Act;

2. help protect individuals from being subjected to discrimination in violation of the Justice System Improvement Act;

3. reduce the time needed to conduct complaint investigations and compliance reviews;

4. help OJARS recipients defend themselves against baseless charges of discrimination; and

5. give recipient agencies the information they need to voluntarily end

discrimination they might not have previously known they were practicing.

Summary of Costs

Sectors Affected: State and local criminal justice agencies.

OJARS recipients may incur some indirect personnel costs in developing a mechanism to collect the required data. Those costs should diminish considerably after they have established the mechanism. However, because most agencies already collect the data the guidelines would require, it should not be unduly burdensome to them.

Related Regulations and Actions

Internal: OJARS has previously published Nondiscrimination Regulations at 28 CFR 42.201, *et seq.*, and Equal Employment Opportunity Program (EEOP) Guidelines at 28 CFR 42.301, *et seq.* The proposed guideline would seek to collect services information in much the same way that the EEOP Guidelines collect employment information. OJARS will revise the EEOP Guidelines for comment at the same time it proposes the Equal Service Program Guidelines. The anticipated revisions in the EEOP Guidelines will reflect an attempt to streamline and clarify the scope of those requirements.

OJARS also revised the existing Nondiscrimination Regulations in April 1980, primarily to make them conform with technical amendments made in the civil rights provisions of the Justice System Improvement Act.

External: None.

Active Government Collaboration

OJARS will request the views of the Civil Rights Division of the Department of Justice, and give them serious consideration.

Timetable

NPRM—Undecided pending agency review.

Public Comment Period—Undecided pending agency review.

Final Rule—Undecided pending agency review.

Final Rule Effective—Upon publication.

Regulatory Analysis—Not required.

Available Documents

ANPRM—44 FR 53179, September 13, 1979.

Agency Contact

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Office of Justice Assistance, Research, and Statistics

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DEPARTMENT OF LABOR

Employment Standards Administration

Sex Discrimination Guidelines— Employee Benefits (41 CFR 60- 20.3(c)*)

Legal Authority

E.O. 11246, as amended by E.O. 11375,
3 CFR 1964-65 Comp., pp. 339-48 and
1966-70 Comp., pp. 684-6.

Reason for Including This Entry

This proposal could involve substantial costs for employers who have contracts with the Federal Government by prohibiting the sex-based provision of unequal fringe benefits. This is a matter of considerable public interest.

Statement of Problem

E.O. 11246, as amended, prohibits employment discrimination on the basis of race, color, religion, sex, or national origin against any person employed by or seeking employment with Federal contractors or under federally assisted construction contracts. It also establishes obligations for Federal contractors and subcontractors to take affirmative action to ensure nondiscriminatory treatment of their employees and of applicants for employment. The sex discrimination guidelines for compliance by Federal contractors with the equal employment opportunity requirements of E.O. 11246 are in 41 CFR 60-20. They contain § 41 CFR 60-20.2(c), which says that with respect to employers' contributions for insurance, pensions, welfare programs, and other similar fringe benefits, the guidelines are not violated where employer contributions for such programs are equal for men and women or where the resulting benefits are equal.

On August 25, 1978, the Department of Labor published in the *Federal Register* proposals to revise both this regulation and the same standard under the Department's Interpretative Bulletin concerning the Equal Pay Act. Under these proposals, sex-based differences in employee benefits would not be lawful even if unequal employer contributions are necessary to ensure equal benefits. Also, it would not be permissible for covered employers to require sex-based differences in employees' contributions to achieve equal benefits. On July 1, 1979, the Equal Employment Opportunity Commission

(EEOC) assumed responsibility for administration and enforcement of the Equal Pay Act. The Department of Labor retained responsibility for administration and enforcement of E.O. 11246.

In light of an April 25, 1978 U.S. Supreme Court decision in the case of *Los Angeles, Department of Water and Power v. Manhart*, 435 U.S. 702, it is not realistic to expect that "the equal contributions or equal benefits" rule, in its present form, may continue. In the *Manhart* decision, the Supreme Court ruled that a city employer's requirement that female employees make larger contributions to its pension fund than male employees because of the longer life expectancy of women as a class discriminated against the individual female in violation of Title VII of the Civil Rights Act of 1964. The Court also ruled that retroactive monetary recovery was inappropriate because this was the first litigation challenging differences in pension fund contributions based on valid actuarial tables, which fund administrators might have assumed justified the differential; the resulting prohibition constituted a marked departure from past practice; and drastic changes in legal rules can have grave consequences on pension funds.

In order to achieve consistency among regulations concerning the equal employment opportunity obligations of employers under Title VII of the Civil Rights Act of 1964, the Equal Pay Act, and E.O. 11246, as amended, DOL modification of this regulation will be necessary.

Alternatives Under Consideration

The major issues under consideration in relation to the treatment of fringe benefits under Title VII, the Equal Pay Act, and E.O. 11246 include: (A) whether and how the provision in the Equal Pay Act which prohibits any reduction in the wage rate of any employee in order to comply with that law applies to resolution of the equal benefits issue; (B) the applicability of the proposal to each of the numerous types of fringe benefit plans (e.g., defined benefit pension plans, defined contribution pension plans, health insurance, life insurance, etc.); (C) its applicability to the various options under retirement benefit plans (e.g., straight-life, joint and survivor, early retirement, etc.); and (D) the effective date of the amendments, including the issue of retroactivity and its effect on accrued or vested benefits.

We will cooperate with the EEOC in developing alternative approaches on this matter.

Summary of Benefits

Sectors Affected: Employees of Federal contractors and federally-assisted construction contractors.

Employers are precluded by the Equal Pay Act from achieving compliance with that law by means of pay rate reductions for employees of the higher-paid sex where sex-based wage differences exist. Applying the prohibition to the fringe benefits issue under the Equal Pay Act, elimination of the equal cost allowance would result in increased fringe benefits for employees whose employers provide fringe benefits but do not provide them on an equal basis to male and female employees regardless of sex because, based on sex-segregated actuarial computations, the cost for any particular benefits is higher, on average, for similarly situated employees of one sex or the other. Retirement benefits could particularly be affected, since women's longevity, on average, is significantly greater than men's. Thus, payment of equal retirement benefits where this has not been the practice will result in higher benefits for female employees. Male employees' retirement benefits would also be affected in terms of increased periodic payments to their surviving spouses where such employees choose a joint-and-survivor pension benefit option that provides the spouse with a continuing payment.

Summary of Costs

Sectors Affected: Federal contractors and federally-assisted construction contractors.

Employee benefit costs of Federal contractors, along with those of employers not affected by E.O. 11246, can be expected to increase as they implement the *Manhart* decision. Because virtually all Federal contractors are covered by Title VII of the Civil Rights Act and the Equal Pay Act, which also apply to other employers, the costs for them to comply with the equal benefits requirement under E.O. 11246 are a part of the total costs of employers involved in complying with this standard under Title VII and revised guidelines under the Equal Pay Act. Fewer employees are affected by coverage under E.O. 11246 than are affected under Title VII and the Equal Pay Act. The development of cost estimates is contingent on the identification of legally feasible options. We will consult with EEOC to delineate the implications for Federal contractors.

Related Regulations and Actions

Internal: None.

External: Subsequent to its July 1, 1979 assumption of jurisdiction for administering and enforcing the Equal Pay Act, the EEOC is reviewing the interpretations which the Department of Labor used in administering the Equal Pay Act (29 CFR 800). The EEOC is studying the question of how to interpret properly the Equal Pay Act in relation to Title VII of the Civil Rights Act, under which it has regulations that also address the subject of equal benefits, and will issue its own interpretations under the Equal Pay Act.

Active Government Collaboration

Consultations between the Equal Employment Opportunity Commission and the Department of Labor are required to achieve consistency among the Federal regulations concerning the equal employment opportunity obligations of employers under Title VII of the Civil Rights Act, the Equal Pay Act, and E.O. 11246, as amended. Consultation with the Internal Revenue Service is also involved so as to avoid any potential conflicts with the Internal Revenue Code and the Employee Retirement Income Security Act.

Timetable

The timetable for finalizing this section of the Office of Federal Contract Compliance Programs' sex discrimination guidelines is contingent on EEOC's progress in addressing the issues involved in determining appropriate treatment of the equal benefits issue, particularly in relation to standards the EEOC will issue regarding prohibited wage discrimination under the Equal Pay Act and the treatment of this issue under Title VII of the Civil Rights Act.

Regulatory Analysis—Under consideration.

Available Documents

Office of Federal Contract Compliance Programs Sex Discrimination Guidelines—41 CFR 60-20.

NPRM—43 FR 38057, August 25, 1978.

Agency Contact

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Compliance Programs
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DOL—Labor Management Services Administration—Pension and Welfare Benefit Programs

Definition of Plan Assets and Establishment of Trust (29 CFR Part 2550)

Legal Authority

Employee Retirement Income Security Act of 1974, §§ 401(b), 403(b) and 505, 29 U.S.C. §§ 1101(b), 1103(a), 1103(b) and 1135.

Reason for Including This Entry

These proposed regulations have generated considerable public interest. A number of the public comments submitted to the Department on the proposals argued that employee benefit plan investments would be curtailed in certain types of companies which invest in small businesses, thereby affecting the amount of capital available to small business. The Department is therefore repropounding the regulations to address these concerns, among others. The portion of the proposals which gave rise to concerns about the amount of capital available to small business was repropounded to address many of the arguments presented by these commentators, and the reproposal, if adopted, should eliminate any unnecessary adverse impact on small business. Public comments generally indicate an acceptance of the principle of the reproposal while indicating some concern about certain technical requirements.

Statement of Problem

The Employee Retirement Income Security Act of 1974 (ERISA) covers virtually all private employee benefit plans. There are several statutory exceptions, such as plans for government employees or plans established by churches. ERISA does not require any employer to establish an employee benefit plan; but if the employer does have an employee benefit plan, the requirements of ERISA will apply to it.

Part 4 of Title I of ERISA sets forth certain requirements that a fiduciary has to meet in handling plan assets. The term "fiduciary" is defined in § 3(21) of ERISA to include a person who exercises any discretionary management of such plan or who exercises any authority or discretion regarding the management or disposition of its assets.

While ERISA contains a definition of fiduciary and that definition uses the concept of "plan assets," ERISA does not explicitly define plan assets. The proposed regulation would provide this

key definition. This definition is important under ERISA because plan assets are the funds which will generate the benefit payments to participants and beneficiaries. Consequently, in order to protect plan assets, ERISA requires that they be held in trust, and provides that persons responsible for decisions regarding those assets be subject to ERISA's fiduciary responsibility requirements (i.e., they must meet certain standards of conduct, such as making prudent investments).

These proposed regulations also relate to the requirement of ERISA that assets of an employee benefit plan must be held in trust by one or more trustees. The Secretary of Labor is authorized to exempt the assets of certain types of employee benefit plans from the trust requirement. One of the proposed regulations would exempt, pursuant to that authority, certain assets of employee welfare benefit plans.

On August 28, 1979, these proposed regulations appeared in the *Federal Register* (44 FR 50363). They substituted for and withdrew a proposal the Department made in December 1974 that was never finalized (29 CFR 2552.1). The Department held public hearings in Washington, DC on February 27 and 28, 1980. At the conclusion of these hearings, the Department held the record open until March 28, 1980 in order to permit the filing of additional comments. Based on these comments, the Department repropounded for comment, on June 6, 1980, a revised version of a portion of one of the August 28, 1979 proposed regulations.

The regulations proposed on August 28, 1979 provided that any property in which a plan has a beneficial ownership interest is a plan asset. They also provided that the assets of an entity in which a plan has an equity investment would be plan assets, except that the assets of operating companies (i.e., companies which are primarily in the business of providing goods or services, but not the investment of capital), whose shares are widely held and freely transferable, and companies that are registered with the Securities and Exchange Commission under the Investment Company Act of 1940, would not be regarded as plan assets. The June 6, 1980 reproposal modifies the proposed definition of plan assets to treat plan investments in the equity securities of certain companies (e.g., certain venture capital companies), which are involved in influencing or controlling the management of the companies in which they invest, in the same manner as plan investments in the equity securities of operating companies (i.e., the assets of

such companies would not be regarded as plan assets). In addition, holding companies of operating companies would be regarded as operating companies and companies primarily engaged in the development or management of real estate (as opposed to merely financing, holding real estate for appreciation, etc.) would also be regarded as operating companies.

The Department believes that the concept of "plan assets" should be clarified so that persons exercising discretionary authority or control respecting the management or disposition of these assets (and who, therefore, are fiduciaries with respect to the plan) are aware of their responsibilities under ERISA.

Alternatives Under Consideration

For the reasons set forth above, the Department has concluded that the alternative of not publishing a regulation defining "plan assets" is inappropriate. The Department is considering modifications to the proposed definition suggested by commentators in this matter. Some modifications were incorporated in the reproposal of June 6, 1980.

Summary of Benefits

Sectors Affected: Fiduciaries (which include trustees and investment managers), sponsors (e.g., employers), participants, and beneficiaries of employee benefit plans; and persons providing investment management services, such as banks and insurance companies.

The benefit of regulations in this area is that confusion as to what are plan assets would be avoided, thus enabling fiduciaries to be aware that they have certain responsibilities respecting the management or disposition of such assets, and the other sectors named above to clearly understand their rights and duties.

Summary of Costs

Sectors Affected: Fiduciaries (which include trustees and investment managers), sponsors (e.g., employers), participants, and beneficiaries of employee benefit plans; and persons providing investment management services, such as banks and insurance companies.

There will be some administrative costs to plan sponsors incident to holding in trust any plan assets that are not now being held in trust. The proposed regulation may also make some persons reluctant to accept plan assets or to act as a fiduciary. This could change plan investment strategies (i.e., investments might be made in

different vehicles). The extent, if any, that such changed investment strategies might affect small business would depend on the availability of needed capital in general. The Department expects the repropounded portion of the proposed regulation to eliminate many of the concerns that pension capital, specifically, will not be available to small business.

Related Regulations and Actions

Internal: None.

External: Section 4975 of the Internal Revenue Code of 1954.

Active Government Collaboration

None.

Timetable

Final Rule—Undecided.

Regulatory Analysis—None.

Available Documents

NPRM—39 FR 44456, December 24, 1974.

NPRM—44 FR 50363, August 28, 1979.

NPRM—45 FR 38084, June 6, 1980.

Public Comments—All documents are available for review in the Public Documents Room, Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, DC 20216. "Plan Asset Regulation."

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DOL—LMSA—PWB

Individual Benefit Reporting and Recordkeeping for Multiple Employer Plans (29 CFR Parts 2520* and 2530*)

Legal Authority

Employee Retirement Income Security Act of 1974, §§ 105, 209, and 505, 29 U.S.C. §§ 1025, 1059, and 1135.

Reason for Including This Entry

The Department of Labor (DOL) proposed regulations in the individual benefit reporting and recordkeeping area which were published on February 9, 1979 (44 FR 8294). These proposed regulations generated considerable public interest among those members of the public directly and indirectly involved with the administration of pension plans. In light of the comments on that proposal, the Department decided to publish new proposed regulations in that area.

Statement of Problem

The Employee Retirement Income Security Act of 1974 (ERISA) imposes a comprehensive scheme of regulation on private sector employee benefit plans. There are several statutory exceptions, such as plans for government employees and plans established by churches. ERISA does not require any employer to establish an employee benefit plan; but if the employer does have an employee benefit plan, it is subject to Title I of ERISA. In the case of pension plans, Title I of ERISA imposes reporting and disclosure requirements, fiduciary duties, and minimum standards. The term "fiduciary" is defined in § 3(21) of ERISA to include a person who exercises any discretionary management of a plan or who exercises any authority or discretion regarding the management or disposition of its assets. With respect to welfare plans, Title I of ERISA imposes only reporting and disclosure requirements and fiduciary duties. This proposed regulation only applies to multiple employer pension plans, other than plans adopted by employers which are under common control. A multiple employer pension plan is one to which more than one employer makes contributions. There are approximately 8 million multiple employer plan participants and beneficiaries.

ERISA generally requires pension plan administrators to provide participants and beneficiaries with statements of the individual benefit entitlements (i.e., the benefits which they would be entitled to receive at retirement age by virtue of their service up to the date of the benefit statement) upon request and upon certain other occasions, such as a 1-year break in service or the termination of service. These statements must include information on the total benefits the individual has accrued, the percentage of those accrued benefits which are nonforfeitable (i.e., the benefits which they will be entitled to receive at retirement age regardless whether they leave employment before retirement age), or the earliest date the benefits would become nonforfeitable.

ERISA also requires employers in plans with more than one employer contributing to furnish the plan administrator with the information necessary to maintain records and compile the benefit statements. The Secretary of Labor has the authority to issue regulations on the specifics of the requirement.

Many plans now provide benefit statements to their participants and beneficiaries; however, many others

may not. Further, of those plans that do issue benefit statements, some of the plans' statements may not be adequate or may not be provided at the appropriate times. Likewise, some plans keep records; but many plans may have inadequate or no records.

On August 8, 1980, the Department published in the *Federal Register* (45 FR 52824) proposed regulations dealing with individual benefit reporting and recordkeeping for multiple employer plans. These proposed regulations specify content, format, and timing of benefit statements and the retention time, content, and manner of retention of records. DOL published separate proposed regulations concerning single employer plans on August 1, 1980 (45 FR 51231). The two sets of proposed regulations published in August 1980 represent a revision and reproposal of individual benefit reporting and recordkeeping regulations that were proposed on February 9, 1979 (44 FR 8294).

In the new proposals, by contrast to the 1979 proposal, the Department issued separate regulations for single and multiple employer plans in order to address more effectively the distinct problems of each type of plan.

Alternatives Under Consideration

In adopting regulations in this area, the Department is seeking to achieve a balance. On the one hand, plans should provide participants and beneficiaries with accurate, timely, and useful information. On the other hand, the Department recognizes the need to avoid imposing undue administrative burdens and costs on employers and administrators.

In response to the originally proposed regulations, the Department received a significant number of comments. In light of these comments, the Department has repropounded the regulations to include some substantial changes. The *Calendar of Federal Regulations* (Vol. 45, No. 106, May 30, 1980) entry for the regulations originally proposed in 1979 discussed four alternatives that were under consideration. The Department has incorporated those alternatives into the repropounded regulations. The following changes were made in the proposed regulations:

(A) The reproposal generally extends the time frame for furnishing individual benefit statements to enable plan administrators to key benefit statements to the end of the plan year (i.e., the plan's fiscal year) and to allow more time for preparing benefit statements.

(B) The reproposal reduces the amount of information that the plan administrator is required to set forth in

the benefit statement, particularly that information which is unique to each participant or beneficiary. This should reduce the burden and cost to the plan attendant involved in retrieving, compiling, and reporting the information in a benefit statement.

(C) The new proposal includes separate individual benefit reporting and recordkeeping regulations for single employer plans and for multiple employer plans. Separation of the regulations permit the Secretary of Labor to establish standards that are appropriate to the different conditions of single employer and multiple employer plans, particularly in the recordkeeping area.

(D) The new proposal indicates that the Department contemplates delaying the date on which collectively bargained multiple employer plans have to be in compliance with the recordkeeping rules. Changes in the collective bargaining agreement may be necessary before such a plan can implement the recordkeeping standard. Because of this, DOL contemplates providing an implementation schedule keyed to the expiration date of the collective bargaining agreement(s) in effect on the date of adoption of the regulations, so that employers can achieve a more orderly compliance to the regulations.

Summary of Benefits

Sectors Affected: Multiple employer pension plan sponsors (employers, labor unions, and joint labor-management bodies that establish plans), administrators (i.e., persons who are responsible for the administration of pension plans), participants and beneficiaries.

The proposed regulations would provide multiple employer plan sponsors and administrators with the necessary guidance for compliance with the statutory provisions. This would enable participants in multiple employer pension plans and their beneficiaries to receive accurate, timely, and useful information about their specific benefit entitlements under pension plans, and to have the information verified from records maintained by the plan under the standards established by the Secretary of Labor. With this information, participants and beneficiaries will be better able to protect their rights to retirement benefits.

Summary of Costs

Sectors Affected: Sponsors and administrators of multiple employer pension plans.

Based on available data as furnished in public comments on the proposed

regulation, the estimated first year cost of complying with the requirements of these repropounded regulations would be approximately \$58.1 million. The start-up costs attributable to the recordkeeping are approximately \$35.8 million. Some plans which currently maintain adequate records will not be faced with significant start-up costs. Approximately \$22.3 million will be expended annually by plans in order to furnish benefit statements on request. The deferral of implementation of the recordkeeping requirements in order to accommodate the collective bargaining process should further reduce the total cost of compliance for all multiple employer plans in any one year. (All costs were estimated based on 1979 dollars.)

Related Regulations and Actions

Internal: None.

External: Treasury Regulations under § 6057 of the Internal Revenue Code of 1954.

Active Government Collaboration

None.

Timetable

Final Rule—Undecided.

Regulatory Analysis—None.

Available Documents

NPRM-45 FR 52824, August 8, 1980 and public comments (public comment period closed October 8, 1980) available for review in the Public Documents Room, Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Ave., N.W., Washington, DC 20216, (202) 523-8671.

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DOL—LMSA—PWBP

Individual Benefit Reporting and Recordkeeping for Single Employer Plans (29 CFR Parts 2520* and 2530*)

Legal Authority

Employee Retirement Income Security Act of 1974, §§ 105, 209, and 505, 29 U.S.C. §§ 1025, 1059, and 1135.

Reason for Including This Entry

The Department of Labor (DOL) proposed regulations in the individual benefit reporting and recordkeeping area which were published on February

9, 1979 (44 FR 8294). These proposed regulations generated considerable interest among those members of the public directly and indirectly involved with the administration of pension plans. In light of the comments on that proposal, the Department decided to publish new proposed regulations in that area.

Statement of Problem

The Employee Retirement Income Security Act of 1974 (ERISA) imposes a comprehensive scheme of regulation on private sector employee benefit plans. There are several statutory exceptions, such as plans for government employees and plans established by churches. ERISA does not require any employer to establish an employee benefit plan; but if the employer does have an employee benefit plan, it is subject to Title I of ERISA. In the case of pension plans, Title I of ERISA imposes reporting and disclosure requirements, fiduciary duties, and minimum standards. With respect to welfare plans, Title I of ERISA imposes only reporting and disclosure requirements and fiduciary duties. This proposed regulation only applies to single employer pension plans, defined to include plans maintained by groups of employers under common control (a term relating to ownership—e.g., the relationship between parent companies and subsidiaries). There are approximately 23 million plan participants and beneficiaries affected by this regulation.

ERISA generally requires pension plan administrators to provide participants and beneficiaries with statements of their individual benefit entitlements (i.e., the benefits which they would be entitled to receive at retirement age by virtue of their service up to the date of the benefit statement) upon written request and upon certain other occasions, such as a 1-year break in service or the termination of service. These statements must include information on the total benefits the individual has accrued, the percentage of those accrued benefits which are nonforfeitable (i.e., the benefits which they will be entitled to receive at retirement age regardless whether they leave employment before retirement age) or the earliest date the benefits would become nonforfeitable.

ERISA also requires employers to maintain records so that the information is available for the administrator of the plan to compile the benefit statements. The Secretary of Labor has the authority to issue regulations on the specifics of the requirement.

Many plans now provide benefit statements to their participants and

beneficiaries; however, many others may not. Further, of those plans that do issue benefit statements, some of the plans' statements may not be adequate or may not be provided at the appropriate times. Likewise, some plans keep records; but many plans may have inadequate or no records.

On August 1, 1980, the Department published in the *Federal Register* (45 FR 51231) proposed regulations dealing with individual benefit reporting and recordkeeping for single employer plans. These proposed regulations specify content, format, and timing of benefit statements and the type, retention time, content, and manner of retention of records. DOL published separate proposed regulations concerning multiple employer plans on August 8, 1980 (45 FR 52824). The two sets of proposed regulations published in August 1980 represent a revision and reproposal of individual benefit reporting and recordkeeping regulations that were proposed on February 9, 1979 (44 FR 8294).

In the new proposals, by contrast to the 1979 proposal, the Department issued separate regulations for single and multiple employer plans in order to more effectively address the distinct problems of each type of plan.

Alternatives Under Consideration

In adopting regulations in this area, the Department is seeking to achieve a balance. On the one hand, plans should provide participants and beneficiaries with accurate, timely, and useful information. On the other hand, the Department recognizes the need to avoid imposing undue administrative burdens and costs on employers and administrators.

In response to the originally proposed regulations, the Department received a significant number of comments. In light of these comments, the Department has repropounded the regulations to include some substantial changes. The *Calendar of Federal Regulations* (Vol. 45, No. 106, May 30, 1980) entry for the regulations originally proposed in 1979 discussed four alternatives that were under consideration. The Department has incorporated those alternatives into the repropounded regulations. The following changes were made in the proposed regulations:

(A) The reproposal generally extends the time frame for furnishing individual benefit statements to enable plan administrators to key benefit statements to the end of the plan year (i.e., the plan's fiscal year) and to allow more time for preparing benefit statements.

(B) The reproposal reduces the amount of information that the plan

administrator is required to set forth in the benefit statement, particularly that information which is unique to each participant or beneficiary. This should reduce the burden and cost to the plan attendant involved in retrieving, compiling, and reporting the information in a benefit statement.

(C) The new proposal includes separate individual benefit reporting and recordkeeping regulations, for single employer plans and for multiple employer plans. Separation of the regulations permits the Secretary of Labor to establish standards that are appropriate to the different conditions of single employer and multiple employer plans, particularly in the recordkeeping area.

(D) The fourth alternative addressed the problems of multiple employer plans and therefore is covered in a separate DOL entry in this *Calendar* (see "Individual Benefit Reporting and Recordkeeping for Multiple Employer Plans").

Summary of Benefits

Sectors Affected: Single employer pension plan sponsors (employers, labor unions, and joint labor-management bodies that establish plans), plan administrators (i.e., persons who are responsible for the administration of single employer pension plans), participants, and beneficiaries.

The proposed regulations would provide single employer plan sponsors and administrators with the necessary guidance for compliance with the statutory provisions. This would enable participants in single employer pension plans and their beneficiaries to receive accurate, timely, and useful information about their specific benefit entitlements under pension plans, and to have the information verified from records maintained by the plan under the standards established by the Secretary of Labor. With this information, participants and beneficiaries will be better able to protect their rights to retirement benefits.

Summary of Costs

Sectors Affected: Sponsors and administrators of single employer pension plans.

Based on available data as furnished in public comments submitted on the proposed regulations, the estimated cost of complying with requirements of these repropounded regulations would be approximately \$29 million annually. Of these costs, employers would spend \$22 million annually for providing statements on request and

approximately \$7 million annually for statements furnished upon terminations and breaks in service. No significant costs are attributable to compliance with the recordkeeping requirements of the regulations. (All costs were estimated based on 1979 dollars.)

Related Regulations and Actions

Internal: None.

External: Treasury Regulations under § 6057 of the Internal Revenue Code of 1954.

Active Government Collaboration

None.

Timetable

Final Rule—Undecided.

Regulatory Analysis—None.

Available Documents

NPRM-45 FR 51231, August 1, 1980 and public comments (public comment period closed October 1, 1980) available for review in the Public Documents Room, Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Ave., N.W., Washington, DC 20216, (202) 523-8671.

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of the General Counsel

Employee Benefit Plans; Proposed Guidelines on the Application of the Age Discrimination in Employment Act of 1967 to Retirement and Pension Plans (29 CFR Part 860.120)

Legal Authority

Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et seq.*

Reason for Including This Entry

The Equal Employment Opportunity Commission (EEOC) believes these proposed guidelines are important because they will clarify the applicability of the Age Discrimination in Employment Act (ADEA) to employee benefit plans and will aid in the elimination of discrimination on the basis of age.

Statement of Problem

Congress amended the ADEA in 1978 to extend protection under the Act from age 65 to age 70. Pursuant to those

amendments, the Department of Labor (DOL), which then administered the ADEA, issued interpretative bulletins, codified at 29 CFR 860.120(f)(1)(iv) and 860.120(f)(2)(ii). These bulletins interpret the ADEA to permit pension plans (1) to cease employee contributions at normal retirement age, (2) to fail to credit service and salary increases which occur after an employee's normal retirement age, (3) to fail to adjust actuarially the benefit accrued as of normal retirement age for an employee who continues work beyond that age, and (4) to fail to take into account benefit improvements and salary increases which take place after an employee reaches the normal retirement age specified in the plan.

As a consequence of DOL's interpretations, many older employees are receiving or will receive diminished pension benefits simply because of their age.

Pursuant to Reorganization Plan No. 1 of 1978 (43 FR 19807, May 9, 1978), responsibility and authority for enforcement of the ADEA, as amended, 29 U.S.C. 621 *et seq.* was transferred from the Department of Labor to the Equal Employment Opportunity Commission. The transfer became effective and the Commission assumed enforcement of this Act on July 1, 1979. In 44 FR 37974, June 29, 1979, the EEOC provided notice that it had undertaken a complete review of DOL interpretations. Pursuant to its authority under the Act, the Commission proposes new interpretative rules on the application of the ADEA to retirement and pension plans.

Alternatives Under Consideration

There are currently no additional alternatives under consideration. The EEOC believes that it is essential to issue revised interpretations in this area, to clarify existing ambiguities and to conform more precisely to the intent of the original Act and the 1978 amendments. However, the Commission may make revisions to its proposal as a result of comments received.

The Commission's interpretation would provide greater pension benefits to older employees than those that are available to them under the current rules. This protection would be more consistent with the purpose of the ADEA.

Summary of Benefits

Sectors Affected: All employers who are subject to the ADEA and who maintain employee benefit plans; all employees who are or may be participants in an employee benefits plan and who seek employment or

remain in the workforce beyond age 65 or "normal retirement age" as defined by the applicable plan.

The proposed guidelines will aid employers in understanding their obligations under the Act and in ensuring that the terms of their employee benefit plans are in conformity with the requirements of the law. The guidelines will benefit employees by ensuring their rights under the Act in a manner consistent with the original statute and the 1978 amendments. The guidelines will provide for the greater continued participation of and accrual of benefits for older employees in employee benefit plans than is now required under the original DOL interpretation still in effect. The EEOC does not yet have monetary figures as to the quantitative benefit to employees. However, it is reasonably believed that these guidelines will improve pension and benefit coverage to older employees.

Summary of Costs

Sectors Affected: All employers who are subject to the ADEA and who maintain employee benefit plans.

The EEOC does not have actual figures as to the costs an employer will incur as a consequence of these guidelines. However, the guidelines have been developed so as not to make it more expensive to retain older workers than it is to retain younger workers. While compliance with the proposed rules will cost employers more than compliance with DOL's rules, the costs imposed will be in keeping with the statute's cost-justification principle. Thus, employers will not be required to expend more for pension benefits on behalf of older workers than on behalf of younger workers.

Related Regulations and Action

None.

Active Government Collaboration

In compliance with E.O. 12067 (3 CFR, 1978, Comp., p. 206), the EEOC has consulted with representatives of the Department of Labor, the Department of Justice, and the Internal Revenue Service.

Timetable

NPRM—Fall 1980.

Regulatory Analysis—The EEOC does not currently plan to conduct a Regulatory Analysis.

Public Hearing—The EEOC does not currently plan to hold a public hearing.

Public Comment Period—90 days following publication of NPRM.

Final Rule—Unknown at present.

Available Documents

Copies of the Proposed Guidelines on the Application of the Age Discrimination in Employment Act of 1967 to Retirement and Pension Plans will not be available until they have been published in the *Federal Register* for public comment.

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EEOC-OGC

Proposed Rule on the Application of the Age Discrimination in Employment Act of 1967 to Apprenticeship Programs (29 CFR 1627)

Legal Authority

Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et seq.*

Reason for Including This Entry

The EEOC believes this proposed rule important because it reflects an interpretation of the Age Discrimination in Employment Act (ADEA) that is more consistent with that statute than the rule currently in effect. This proposed rule will aid in the elimination of discrimination on the basis of age.

Statement of Problem

On July 1, 1979, pursuant to Reorganization Plan No. 1 of 1978, (43 FR 19807, May 9, 1978) responsibility and authority for enforcement of the Age Discrimination in Employment Act of 1967, as amended (ADEA) (29 U.S.C. § 621, 623, 625, 626-633, and 634) was transferred from the Department of Labor (DOL) to the Equal Employment Opportunity Commission (EEOC). The Commission assumed enforcement of the ADEA on that date. Prior to the assumption of jurisdiction, the Commission commenced a in-depth review of all existing interpretations of the ADEA which were promulgated by DOL (see 44 FR 37974, June 29, 1979). On November 30, 1979, the Commission published in the *Federal Register* its proposed interpretations of the ADEA (See 44 FR 68858, November 30, 1979). However, those proposed interpretations did not address the interpretation contained at 29 CFR 860.106 concerning apprenticeship

programs. After exhaustive review, the Commission proposes to rescind that interpretation and promulgate a new rule regarding apprenticeship programs under the ADEA.

The consequence of the DOL rule has been to exclude people on the basis of age from job opportunities. Exclusion from the meaningful training provided by apprenticeship programs has also meant exclusion from meaningful jobs. The exclusion affects workers who are relatively young, i.e., in their 30's, as well as older workers. It significantly limits the options available to people today who may have to change careers because of economic dislocation. The age exclusion also compounds other discrimination, since women and minorities have often been discriminatorily excluded from apprenticeship programs. These groups later suffer added discrimination on the basis of age. The Commission's proposal will have the effect of opening up greater opportunities to all workers.

The proposed rule will rescind DOL's interpretation, which permits age limitations for admission into apprenticeship programs. EEOC bases its proposal on several factors. First, the existing interpretation runs counter to the stated purposes of the ADEA, which are to promote employment of older persons based their ability rather than age. Second, the statute and its legislative history do not support an interpretation which completely excludes apprenticeship programs from coverage under ADEA. While some apprenticeship programs may have legitimate reasons for excluding employees on the basis of age, those few exceptions do not justify the blanket exemption now in effect. The Commission retains its authority under § 9 of the ADEA to grant "reasonable exemptions . . . as necessary and proper in the public interest."

Alternatives Under Consideration

(A) The Commission could have adopted the DOL rules. For the reasons stated above it was determined that such action would not have been consistent with the statute.

(B) The Commission determined that a change in the rules was essential to equitable enforcement of the statute.

Summary of Benefits

Sectors Affected: All employers, unions, and joint labor management committees who administer apprenticeship programs; and all employees who wish to participate in such apprenticeship programs.

The new rule will provide better

guidance to those sectors affected as to the applicability of the ADEA to apprenticeship programs. It will thus be easier to come into compliance with the statute. Additionally, the new rule will open up new job opportunities previously denied to employees on the basis of age. Workers will have access to more jobs as a consequence of better and greater numbers of training opportunities. Women and minorities may also find more employment opportunities that were previously denied to them because of sex or race discrimination.

Summary of Costs

Sectors Affected: All employers, unions, and joint labor management committees who administer apprenticeship programs.

No additional costs should be incurred as a consequence of this rule change. There are no new recordkeeping requirements, and apprenticeship programs will not alter their mode of operation.

Related Regulations and Actions

None.

Active Government Collaboration

In compliance with E.O. 12067 (3 CFR 1978, Comp., p. 206) the EEOC has consulted with representatives of the Department of Labor and the Department of Justice.

Timetable

Public comment period—September 29, 1980-November 28, 1980.

Final Rule—Fall 1980.

Public Hearing—None planned.

Regulatory Analysis—EEOC will not prepare.

Available Documents

Copies of the proposed rule published September 29, 1980 at 45 FR 64212, are available from: The Equal Employment Opportunity Commission, Office of the Executive Secretariat, 2401 E Street, N.W., Washington, DC 20506.

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EEOC—Office of Policy Implementation

Interpretive Guidelines on Employment Discrimination and Reproductive Hazards

Legal Authority

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e) *et seq.*

Reason for Including This Entry

The Equal Employment Opportunity Commission (EEOC) believes these guidelines are important because employment policies, practices, and plans relating to reproductive hazards can have the effect of denying employment opportunities to individuals. Thus, the guidelines will aid in the elimination of discrimination on the basis of sex.

Statement of Problem

These Hazardous Substances Guidelines are the result of the collective efforts and expertise of several Federal agencies. These efforts were necessitated by charges presented to the Equal Employment Opportunity Commission and to the Office of Federal Contract Compliance Programs (OFCCP), alleging employment discrimination in workplaces containing substances and conditions hazardous to reproductive health.

Also, EEOC and OFCCP became aware of the increasing number of employers and contractors who are initiating policies excluding all women of childbearing capacity from certain jobs because of exposure to hazardous substances or conditions. A number of employers and contractors have policies of not hiring women of childbearing capacity for jobs in which there is exposure to alleged reproductive hazards, and have terminated or transferred women to lower paying jobs based on such policies. Employers and contractors, in establishing such practices, often show a lack of concern for similar effects upon men. Some employers and contractors have attempted to justify these policies on the basis of potential harm occurring to an unborn child through exposure of the mother. These policies have been developed without apparent regard to whether exposure of the father can result in harm to the unborn child. Preliminary evidence indicates that as many as 20 million jobs may involve exposure in the workplace to alleged reproductive hazards.

In response to such exclusionary practices, the EEOC, on April 21, 1978, issued a policy statement indicating its

concern about whether such practices conform with Federal antidiscrimination laws. In a May 31, 1978 letter from the Department of Labor's Assistant Secretary for Occupational Safety and Health, the Occupational Safety and Health Administration (OSHA) expressed its concern regarding employment practices which deny opportunities to any class of workers on the basis of safety and health. On February 1, 1980, the EEOC published guidelines specifically addressing those situations involving allegations of sex discrimination.

Title VII of the Civil Rights Act of 1964, as amended, and E.O. 11246 require that the enforcement agencies closely scrutinize the exclusion of a sex-based class from consideration for employment.

Exclusions which, by their stated terms, are based on membership in a sex-based class are *per se* violations of Title VII and E.O. 11246 because the exclusions are expressed or implemented in terms of membership in a class protected by Title VII and E.O. 11246. Also, an employer/contractor's conduct which treats disparately members of a sex-based class raises a presumption of a violation of Title VII and E.O. 11246. Finally, a neutral employment policy which appears to be neutral on its face but in reality has an adverse impact upon a specific sex-based class is an unlawful employment practice unless it is truly neutral and is justified by the employer/contractor.

It is important to note that, as a result of the Pregnancy Discrimination Act, P.L. 95-555, 92 Stat. 2067 (1978), women affected by pregnancy, childbirth, or related medical conditions constitute a protected class under Title VII. All such women must be treated the same for employment-related purposes as other persons not so affected but similar in their ability or inability to work. For example, where an employer/contractor seeks to determine the hazardous reproductive effects on pregnant women from their exposure to a certain substance or condition, the employer/contractor must also determine the effects on males and nonpregnant females from the same exposure.

If the hazard is known to affect the fetus through either parent, an exclusionary policy directed only at women would be unlawful under Title VII and E.O. 11246. Further, if the hazard is shown by reputable scientific evidence to affect the fetus through women only, the class excluded must be limited to pregnant women and not all women of childbearing capacity. Whether expressed in a policy or not, the employer/contractor's conduct will

be examined by the enforcement agencies to determine whether the conduct is nondiscriminatory or justified.

Alternatives Under Consideration

Various charges of sex discrimination currently pending before the Commission make it apparent that greater guidance as to the applicability of Title VII to exclusionary policies is needed. The Commission is presently analyzing the large number of comments received in response to the NPRM of February 1, 1980 (45 FR 7514).

Summary of Benefits

Sectors Affected: Employees of industries in which workers are exposed to reproductive hazards.

These guidelines provide clear guidance to employers as to types of practices the EEOC believes to be in violation of Title VII of the Civil Rights Act of 1964, as amended. In addition, they are designed to protect large numbers of women employees and applicants from arbitrary and discriminatory exclusion from job opportunities. Similarly, they are designed to assure that employers consider the potential hazards to the reproductive capacity of male employees in the adoption of any exclusionary policies to ensure equitable application of such policies.

Summary of Costs

Sectors Affected: Industries in which workers are exposed to reproductive hazards.

The guidelines require employers to initiate research designed to produce evidence of the effect of the reproductive hazard as used in the employer/contractor's workplace. The guidelines provide for the conducting of joint studies by employers. Also, if the employer/contractor does not have the capacity to conduct or sponsor the necessary research, the employer can request the Occupational Safety and Health Administration (OSHA) to perform the research. The Commission believes that the cost of conducting such research will vary from employer to employer. The Commission is unable to place a dollar figure on the cost of such research at this time. The proposed guidelines specifically requested comments as to anticipated costs in this area. Many of the comments received addressed themselves to the problem of costs and the Commission is analyzing these submissions.

Related Regulations and Actions

None.

Active Government Collaboration

In compliance with E.O. 12067 (3 CFR, 1978, Comp., p. 206), the Commission consulted with representatives of the Department of Labor, the Occupational Safety and Health Administration, and the Office of Federal Contract Compliance Programs.

Timetable

Regulatory Analysis—EEOC will not prepare.
Public Hearing—None.
Final Guidelines—Date not known at present.

Available Documents

Copies of the proposed Guidelines, published February 1, 1980, are available through the Office of Policy Implementation, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, DC 20506. The public comment period ended July 2, 1980. Comments may be reviewed from 9:30 a.m.-4:30 p.m. at the Equal Employment Opportunity Commission Library, 2401 E Street, N.W., Washington, DC 20506.

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EEOC-OPI**Proposed Revision of the Guidelines on Discrimination Because of National Origin (29 CFR Part 1606*)****Legal Authority**

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e) *et seq.*

Reason for Including This Entry

The Equal Employment Opportunity Commission (EEOC) includes this entry because it is a matter of great public importance and because these guidelines will aid in the elimination of discrimination on the basis of national origin. The proposed revision will clarify the guidelines and thereby specifically inform the public of unlawful employment practices which discriminate on the basis of national origin. These guidelines reaffirm the Commission's position on national origin discrimination as expressed in Commission decisions and other legal interpretations.

Statement of Problem

The key revision of the proposed guidelines deals with "speak-English-only" rules used by some employers. Under a new section, the Commission finds that totally prohibiting employees from speaking their primary language in the workplace violates Title VII of the Civil Rights Act of 1964, as amended, except in limited circumstances. According to the guidelines, the "speak-English-only" rule is a term and condition of employment which may discriminate on the basis of national origin by restricting an individual's employment opportunities and by creating a discriminatory working environment. Where such a rule exists, the Commission said that it would be closely scrutinized.

The guidelines recognize that an individual's primary language is often an essential national origin characteristic. According to estimates, approximately 28 million persons in the United States, or about 13 percent of the total population, have non-English language backgrounds and may be affected by an employer's "speak-English-only" rule. The major groups are Spanish, 10.6 million; Italian, 2.9 million; German, 2.7 million; French, 1.9 million; Chinese, Japanese, Korean and Vietnamese, 1.8 million; Polish, 1.5 million.

The guidelines do recognize, however, that requiring employees to speak only in English at certain times would not be discriminatory if the employer shows that the rule is justified by business necessity. In such situations, the employer is obliged to clearly inform employees of the circumstances in which they are required to speak only in English and the consequences of violating the rule.

The guidelines hold that notice of such a rule is necessary because it is common for individuals whose primary language is not English to inadvertently slip from speaking English to speaking their primary language. Any adverse employment decision against an individual based on a violation of the rule will be considered as evidence of discrimination when an employer has not given effective notice of the rule.

The guidelines follow in the wake of a Fifth Circuit Court of Appeals decision, *Garcia v. Gloor*, 618 F.2d 264 (1980), where the Court noted that there were not standards or regulations for judging employer rules on speaking English.

Alternatives Under Consideration

With reference to the above, it was apparent to the Commission that revised guidelines were necessary in order to clarify interpretation of the statute and

to explain the applicability of Title VII prohibitions against national origin discrimination to situations involving "English-only" rules in the workplace. Therefore there are no alternatives.

Summary of Benefits

Sectors Affected: Employers, unions, and employees subject to Title VII of the Civil Rights Act of 1964, as amended; EEOC; and the Federal courts.

These guidelines will benefit employers, unions, and employees in defining clearly the prohibitions embodied in Title VII with regard to discrimination based on national origin. The clarification will assist the EEOC and the courts in their enforcement of the statute. The greater understanding provided by the guidelines will assist in providing protection against discrimination and make it less likely that people will be denied job opportunities because of discrimination.

Summary of Costs

Sectors Affected: All employers and unions subject to Title VII of the Civil Rights Act of 1964, as amended.

No costs are likely to be incurred as a consequence of abiding by these guidelines. The guidelines simply clarify existing law and statutory interpretation. No new obligations are imposed as a consequence of the guidelines.

Related Regulations and Actions

None.

Active Government Collaboration

Pursuant to E.O. 12067 (3 CFR, 1978, Comp., p. 206), the EEOC has coordinated these proposed guidelines with the Departments of Labor, Health and Human Services, Transportation, Education, Housing and Urban Development, and Treasury; the National Labor Relations Board; and the Office of Personnel Management.

Timetable

Final Guidelines—Fall 1980.
Regulatory Analysis—EEOC will not prepare.

Available Documents

Copies of the guidelines, published September 19, 1980 (45 FR 184), and public comments are available from: The Equal Employment Opportunity Commission, Office of the Executive Secretariat, 2401 E Street, N.W., Washington, DC 20506.

Agency Contact

Karen Danart, Acting Director, or
Raj K. Gupta, Supervisory Attorney

Office of Policy Implementation
Equal Employment Opportunity
Commission
2401 E Street, N.W.
Washington, DC 20506
(202) 634-7060

GENERAL SERVICES ADMINISTRATION

Administration Operations Division (HRO)

Nondiscrimination Against Handicapped Persons in Programs and Activities Receiving Federal Assistance (41 CFR Part 101-6.3)

Legal Authority

Rehabilitation Act of 1973, 29 U.S.C. § 794; E.O. 11914, 3 CFR, 1976 Comp., p. 117; 40 U.S.C. § 486(c).

Reason for Including This Entry

The General Services Administration (GSA) has included this item because of the high level of public interest in nondiscrimination against handicapped persons in federally assisted programs and activities.

Statement of Problem

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) prohibits discrimination against handicapped persons in all programs and activities receiving Federal assistance. E.O. 11914 designated the Department of Health, Education, and Welfare (HEW) as the lead agency to coordinate Government-wide enforcement of 504. HEW issued regulations (45 CFR Part 85) in 1978 which set standards, procedures, and guidelines for other agencies to follow in issuing their own regulations. We intend our proposed regulations to be consistent with the HEW standards and guidelines. It establishes the procedures GSA will use to enforce nondiscrimination against handicapped persons in programs and activities which receive Federal assistance under laws which GSA administers in whole or in part.

GSA's assistance typically consists of donation or sale below market price of surplus Federal property—land, buildings, historical records, vehicles, or supplies—to State and local governments and other public or charitable bodies. These recipients in turn use the property for a wide range of purposes, such as airports, parks, education, public health, public safety, and economic development. GSA makes over 50,000 grants of assistance and

conveys approximately \$4 billion in surplus property to the States each year.

The proposed GSA regulation will require the applicants for assistance from GSA submit an assurance to GSA that the assisted program or activity will be offered on a nondiscriminatory basis, and will be accessible to the handicapped. Where the assistance is in the form of real property, the proposed regulation requires a covenant in the deed which would allow GSA to reclaim the property if the recipient's use is contrary to the nondiscrimination provisions. The proposed regulation requires recipients to evaluate the effectiveness of their nondiscrimination efforts and to set up a grievance procedure and encourages them to take remedial action on a voluntary basis. The requirement of nondiscrimination also applies to employment under federally assisted programs and activities.

Alternatives Under Consideration

There are no alternatives under consideration, because HEW guidelines leave little room to vary these proposals. At an early stage in the development of the proposed regulation, we decided simply to require an "assurance," the form of which may be different for different applicants, and to exempt small recipients (those with fewer than 15 employees) from some requirements of the regulation.

Summary of Benefits

Sectors Affected: Persons with physical handicaps; State and local governments, and other public bodies and charitable organizations receiving assistance from GSA; and programs and activities that benefit from this assistance.

The physically handicapped of our society will be assured of equal benefit from and access to programs and facilities which receive Federal support through GSA. A study of the number of handicapped persons who use these programs and activities is now under way. Where employment is stimulated by the federally supported programs, we expect to see long-term productivity improvements because of the high productivity levels of qualified handicapped workers. Some handicapped workers may achieve self-sufficiency or higher standards of living because of these employment opportunities.

Summary of Costs

Sectors Affected: State and local governments, and other public and charitable bodies receiving Federal

assistance through GSA; programs and activities that benefit from this assistance; and GSA.

We will require recipients to ensure that the assisted programs and services are available on a nondiscriminatory basis to handicapped persons. The costs of actual compliance imposed by statute may be quite high (as where building modifications are needed). The cost of giving assurances to GSA, as the GSA regulation would require, is quite small and we do not expect that cost to deter any applications for assistance from GSA. All recipients and GSA would incur some cost of compliance monitoring. This monitoring is closely related to the monitoring for racial and other forms of prohibited discrimination, and we expect the additional cost to recipients will be small. GSA will bear the costs of more on-site reviews.

Related Regulations and Action

Internal: 41 CFR Part 101-6.2.

External: 28 CFR 42.401-415.

Active Government Collaboration

GSA has worked with the Architectural and Transportation Barriers Compliance Board (a Government board created by the Rehabilitation Act of 1973) on developing standards for the design, construction, or alteration of facilities. As required by the Department of Health, Education, and Welfare (HEW) regulation, GSA's proposed final regulation has been submitted to HEW (now the Department of Health and Human Services).

Timetable

Public Hearing—None.

Final Rule—December 1980.

Regulatory Analysis—Not required.

Available Documents

NPRM—44 FR 62298, October 30, 1979.

Public Comments—Anyone interested in reviewing public comments in response to the NPRM may contact the Agency Contact listed below.

Agency Contact

Jacquie C. Perry, Acting Director
Compliance and Investigations
Division
Office of Civil Rights
General Services Administration
18th & F Streets, N.W., Room B-219
Washington, DC 20405
(202) 566-1625

GSA—National Archives and Records Service**Freedom of Information Act Requests for National Security Classified Information in the National Archives (41 CFR Parts 105-61*)****Legal Authority**

Freedom of Information Act, 5 U.S.C. § 552; E.O. 12065, 3 CFR, 1978 Comp., p. 190.

Reason for Including This Entry

The General Services Administration (GSA) included this rule in the Calendar because it deals with access to classified information, which is an important resource for historical research.

Statement of Problem

The Freedom of Information Act (FOIA) sets out procedures for obtaining information and records from Federal Government agencies. Researchers and other persons seeking access to records of Federal agencies under FOIA direct their requests to the agency which has custody of the records. The National Archives and Records Service (NARS) of the General Services Administration acts as custodian of noncurrent records of Federal agencies, including records classified for reasons of national security. A request for access to classified information also serves as a request for declassification of the information. NARS is authorized to declassify records more than 20 years old (or 30 years in the case of foreign government information provided to the United States). If a request is for newer classified records, NARS forwards a request for declassification to the agency with declassification authority (usually the originating agency), and that agency decides whether to declassify the requested information. FOIA requires NARS to notify the requestor of a denial of access, but under current NARS regulations, agencies with declassification authority sometimes inform requestors directly of denials of declassification without informing NARS. As a result, NARS is sometimes unable to respond to requests on a timely basis, while at other times the requestor may receive duplicate notices from the other agency and from NARS.

Alternatives Under Consideration

The proposed regulation changes the current procedure so that agencies with declassification authority would notify NARS of the decision about declassification and NARS would in turn provide a single notification to the

requestor. Our alternative would be to keep the current procedure.

Summary of Benefits

Sectors Affected: Persons and organizations requesting access to national security classified information under the Freedom of Information Act; NARS; and other agencies with declassification authority.

If NARS changes the regulation, the 100 to 200 people a year who request access to national security classified information will maintain direct contact with NARS when it is the agency which has physical custody of the records, and will receive notices only from NARS. We expect that this "single point of contact" approach will be less confusing to persons requesting information. It should also slightly reduce costs of other government agencies by reducing duplication of notices.

Summary of Costs

Sectors Affected: None.

The proposed regulations has no direct or indirect costs.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

NPRM—Early 1981.
Public Hearing—None.
Public Comment Period—60 days following NPRM.
Final Rule—Mid-1981.
Regulatory Analysis—Not required.

Available Documents

Public Use of Archives and FRC Records, 41 CFR Parts 105-61.

Agency Contact

Adrienne C. Thomas, Director
Planning and Analysis Division
(NAA)
National Archives and Records Service
General Services Administration
Washington, DC 20408
(202) 523-3214

SMALL BUSINESS ADMINISTRATION**Revision to Method of Establishing Size Standards and Definitions of Small Business (13 CFR Part 121)****Legal Authority**

The Small Business Act, 15 U.S.C. §§ 632 and 634.

Reason for Including This Entry

The Small Business Administration (SBA) thinks that these rules are important because they will define the term "small business" and thus clarify what businesses are eligible for SBA programs. In addition, these rules have an annual effect on the economy in excess of \$100 million.

Statement of Problem

SBA is charged by the Small Business Act of 1953 and the Small Business Investment Act of 1958 to administer a wide variety of programs designed to benefit the small business community of the United States. These programs include financial business assistance, such as direct loans, loan guarantees, and surety bond guarantees; management and technical assistance, such as direct consultation; and provision of opportunities to contract with the Federal Government to provide it goods and services. Eligibility for these programs is based on, among other things, the size of the applicant. SBA must define the term "small business" in a manner which is equitable to all concerns seeking the Agency's assistance. Hence, size standards are necessary, and we have set them to cover each of the industries specified in the Standard Industrial Code. We urge other Federal agencies to use these standards as well, and many do, in their contracting and financial assistance programs.

The promulgation of size standards is a difficult chore because the concept of size is by nature a relative one. The Small Business Act precludes SBA from rendering assistance to firms that are dominant in their industries. However, conception of the size of a firm can be based on a number of other factors, including number of employees, sales per particular time period, and competitive position within an industry or geographic area. It may also be appropriate to define "small" differently depending on the SBA program involved.

In the past, size standards have varied from SBA program to program and were often set to suit the preferences of SBA's program offices or other procuring agencies within the Federal Government. However, many of these standards attracted considerable criticism from the public because they were factually unsubstantiated, inconsistent, and confusing, and not tied sufficiently to expressed SBA policy. Both the House and Senate Small Business Committees have made frequent inquiries concerning SBA's size-standard setting procedures, and

the General Accounting Office prepared two reports in 1978 and 1979 which were somewhat critical of the process as it concerned SBA's procurement and timber set-aside programs.

All of this led SBA Administrator A. Vernon Weaver to pledge in congressional testimony, in 1979, that SBA would develop new size standards where justified.

SBA thinks that the proposed revision of these size standards rules is important because it will update and improve the logic, methodology, and format of the size standards. It will simplify understanding of SBA programs for the small business community, reduce complexity in the administration of SBA's programs, and improve the targeting of SBA's resources.

Alternatives Under Consideration

The possible alternatives under consideration are:

(A) SBA can use a combination of factors to determine a firm's size for the purposes of these proposed rules, such as sales, number of employees, and gross assets. The advantage of this system is that it allows for review of a firm from a number of different viewpoints. The disadvantage is that it can confuse the small business community and the public at large because it will require comparisons of the operative factors within various industries which cannot be easily made and which will make uniformity of decisionmaking, to the extent that it is desirable, an impossibility. Furthermore, SBA has found that size standards measured in dollars, such as in sales or gross assets, are not a true measure, since inflation can affect different products or assets differently, and distort any attempt to compare their prices.

(B) SBA can use a single factor, such as number of employees, to determine a firm's size. Such a standard will be easier for SBA to administer, but might be inequitable, because the factor chosen may not be an adequate measure of size in a given industry. However, SBA feels that using employment as opposed to sales or assets will provide greater stability for SBA and its clients because it will remove distortions generated by inflation and will reduce the need for frequent future adjustments merely to reflect inflation.

(C) SBA can use the same size standard in administering each of its programs. This will promote uniformity in SBA decisionmaking and ease of administration for SBA and applicants, but it also inevitably will lead to decisions that do not take all the

important variables into consideration.

(D) SBA can use individual size standards for each of its programs, which may mean several different standards would apply to one company. This will lead to a more flexible decisionmaking process, but will also promote confusion and difficulty in administration, because a given company might be eligible for one SBA program and not another based on this system.

Currently, SBA bases its size standards on a combination of factors and uses different standards for each of its programs. We are proposing to use the firm's number of employees as the exclusive measure of size, and to develop a single standard to cover all of our programs by this proposed revision.

Summary of Benefits

Sectors Affected: SBA; businesses eligible to receive SBA assistance.

The proposed regulations will benefit SBA because they will help us determine which businesses will be eligible for SBA assistance. Our program will cover all sectors covered by the Standard Industrial Classification.

Currently, about 99 percent of all American firms meet the definition of "small business," and are eligible for SBA assistance. We project that our redefinition will decrease that figure to 96 percent. While this means that some businesses that previously may have been eligible for SBA assistance may no longer be eligible, there will be a corresponding benefit to those that remain eligible, in that there may be fewer companies competing for SBA assistance.

We cannot project precisely what the cost or benefit impact will be in this respect, because businesses are not automatically entitled to SBA assistance if they meet our definition of "small." There are no other eligibility requirements for the various SBA programs that would still apply to an applicant in a given situation. (Our proposed rule to redefine "small business" will not modify these program-specific requirements.)

Summary of Costs

Sectors Affected: Businesses that may no longer be defined as small.

Because the total number of businesses eligible for SBA assistance will decline by about 3 percentage points (from 99 percent under the current definition to about 96 percent under the new definition), some businesses that previously may have been eligible for SBA assistance will no

longer be eligible for assistance. This represents a difference of about 225,000 businesses, of which about 150,000 are agricultural and about 75,000 are industrial, manufacturing, or retail businesses.

Related Regulations and Actions

Internal: In order to be eligible for any SBA business assistance, SBA must determine the firm is "small." Therefore, these regulations will, of necessity, affect the application of all of the Agency's business assistance regulations, including 13 CFR Parts 106, 107, 115, 118, 119, 120, 122, 124, 125, 128, 129, 130, and 131.

External: These regulations will affect any Federal regulations which contemplate governmental assistance to, or contracting with, small business, if those regulations incorporate by reference SBA's definitions of small business. Use of SBA's size standards is left to the discretion of each governmental agency.

Active Government Collaboration

In establishing its size standards, SBA has relied upon information developed by the Department of Commerce and Internal Revenue Service. SBA contemplates the receipt of comments and suggestions from other Federal and State agencies on its proposed rules during the comment period thereon.

Timetable

NPRM—December 5, 1980.

Final Rule—April 5, 1980.

Regulatory Analysis—A Regulatory Analysis of these rules is presently being prepared.

Available Documents

ANPRM—45 FR 15442, March 10, 1980; 45 FR 23704, April 8, 1980; and 45 FR 59587, September 10, 1980.

In addition, comments received in regional hearings held between May 8 and June 5, 1980, and comments in response to the ANPRMs, are available at SBA's Central Office, 1441 L Street, N.W., Washington, DC 20416, for public review and inspection.

Agency Contact

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Size Standards Division
Small Business Administration
1441 L Street, N.W., Room 500
Washington, DC 20416.
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VETERANS ADMINISTRATION**Department of Memorial Affairs****State Cemetery Grants (38 CFR 39)****Legal Authority**

Veterans Housing Benefits Act of 1978, § 202(b)(1), 38 U.S.C. § 1009.

Reason for Including This Entry

The Veterans Administration (VA) believes that these regulations will be of interest to veterans, State officials, and the general public, because they establish procedures for a grant program to establish and improve State veterans' cemeteries.

Statement of Problem

The Veterans Housing Benefits Act of 1978 authorized the Veterans Administration to make grants to States to assist in establishing and improving veterans' cemeteries. The proposed regulations will define eligibility and requirements for participation in the program, and establish minimum standards for cemetery construction projects assisted through grant funds. The requirements will elaborate on the provisions of Office of Management and Budget Circular No. A-95 (Revised), which provides for the evaluation, review, and coordination of Federal and federally-assisted programs and projects, and OMB Circular No. A-102, which provides the uniform administrative requirements for grants-in-aid to State and local governments.

Alternatives Under Consideration

These regulations will implement the requirements of § 202(b)(1) of the Veterans Housing Benefits Act of 1978. The regulations establish standards and guidelines relating to site selections, planning, and construction which will be applied to this grant program.

Summary of Benefits

Sectors Affected: States, Territories, and Possessions of the United States, including the District of Columbia and the Commonwealth of Puerto Rico, that apply for grant assistance for a cemetery construction project; and veterans and their families.

These regulations will guide and assist State officials in applying for assistance for veterans' cemetery project from the State Cemetery Grants Program. No State may receive grants in any fiscal year in a total amount in excess of 20 percent of the total amount appropriated for each fiscal year.

The grant program and the regulations will help interested States develop and improve State veterans' cemeteries. This

will indirectly benefit the veteran and other residents of the State.

Summary of Costs

Sectors Affected: None.

Congress authorized to be appropriated \$5 million for FY 1980 and for each of the 4 succeeding fiscal years for the purpose of these VA grants. The cost of compliance with this regulation on the part of the States wishing to apply for a grant will not be significant.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

Final Rule—November/December 1980.

Regulatory Analysis—Not required.

Available Documents

OMB Circular No. A-95 (Revised).

OMB Circular No. A-102.

NPRM—44 FR 55866-55872.

Agency Contact

Harold F. Graber, Director
State Cemetery Grants Program
Department of Memorial Affairs (40G)
Veterans Administration
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Washington, DC 20420
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VA—Office of Human Goals**Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance From the Veterans Administration (38 CFR Part 18e)****Legal Authority**

The Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.*

Reason for Including This Entry

The Veterans Administration (VA) thinks this rule is important because it will allow qualified individuals regardless of age to participate in programs and activities that are federally funded and that have been previously denied to them.

Statement of Problem

The Age Discrimination Act of 1975 requires each Federal agency that grants Federal financial assistance to any program or activity to implement regulations to carry out the provisions of the Act. The purpose of the Act is to prohibit discrimination on the basis of age. The Act applies to persons of all ages. These proposed regulations

concern activities that receive Federal financial assistance from VA. The programs that are covered are generally the same as those covered by Title VI of the Civil Rights Act of 1964, but exclude those programs that involve employment.

VA proposes to use procedural provisions contained in the regulations for Title VI of the Civil Rights Act of 1964 to enforce proposed VA regulations. These provisions are 38 CFR §§ 18.9-18.11 and 38 CFR Part 18b.

Alternatives Under Consideration

This regulation will implement the requirements of the Age Discrimination Act of 1975 and the governmentwide regulations issued by the former Department of Health, Education, and Welfare (45 CFR Part 90). Because these regulations are mandated by legislation, those requirements provide no alternative for consideration.

Summary of Benefits

Sectors Affected: All persons involved in programs and activities receiving VA financial assistance, except those programs that involve employment.

The regulations will help assure that the benefits of federally assisted programs and activities will be extended to all eligible persons without discrimination. These regulations, however, will not result in more programs for either the elderly or youth; and they are nullified if there exists a Federal, State, or local legislation that requires an age distinction.

Summary of Costs

Sectors Affected: None.

We believe that the cost to the Veterans Administration and to the recipients will be minimal.

Related Regulations and Actions

Internal: None.

External: Department of Health, Education, and Welfare, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 CFR Part 90.

Active Government Collaboration

The Veterans Administration's regulation will be similar to those issued by the Department of Health, Education, and Welfare (HEW), except as necessary to meet specific Veterans Administration organizational, procedural, or program requirements. We anticipate entering into an agreement with Federal agencies to eliminate duplication of enforcement effort. This would parallel the delegations of responsibility with regard

to Title VI of the Civil Rights Act of 1964, which makes HEW (now Department of Education and Department of Health and Human Services) responsible for institutions of higher learning, public schools, and hospital and other health facilities, and the Veterans Administration responsible for privately owned schools.

Timetable

NPRM—December 1980.

Public Comment Period—30 days after proposed regulations are published.

Final Rule—October 1981.

Regulatory Analysis—Not required.

Available Documents

None.

Agency Contact

Marion M. Slachta, Equal Opportunity
Specialist

Veterans Administration

Office of Human Goals (091S)

Standards, Resources, and Training
Service

810 Vermont Avenue, N.W.

Washington, DC 20420

(202) 389-2943

CHAPTER 6—TRADE PRACTICES

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Amendments to Federal Seed Act Regulations (7 CFR Parts 201* and 202*)

Legal Authority

Federal Seed Act of 1939, 7 U.S.C. § 1551 *et seq.*

Reason for Including This Entry

The U.S. Department of Agriculture (USDA), the State governments that cooperate in the enforcement of the Federal Seed Act (FSA), and the seed industry recognize several problem areas in the Federal seed regulatory program. The goal is to modify the regulations to serve the public interest more effectively.

Statement of Problem

The FSA is designed to protect farmers and other consumers who buy seed that is sold across State lines, or is imported. There are approximately 2,500 seed shippers and the value of seed shipped interstate each year is estimated at \$3 billion. The FSA requires labeling of all such seed, prohibits false labeling and advertising, and prohibits importation of uncleaned seed, seed with low germinating levels, and seed containing noxious-weed seeds. The consequences of failure to control seed transactions such as these include a reduction in crop quality, sometimes to the point of crop failure (as with seed that will not germinate). Similarly, excessive noxious-weeds in a crop will render it economically worthless.

USDA and State governments cooperate in enforcing the FSA. The States enforce their laws independently of the FSA. Federal enforcement begins with the States reporting violations to

USDA. The States cooperate in sampling, testing, and investigating interstate shipments of seed. The Agricultural Marketing Service (AMS) of USDA cooperates with the Animal and Plant Health Inspection Service (APHIS) of USDA and the U.S. Customs Service (Customs) by testing samples of exported and imported seed, respectively, that are taken by APHIS and Customs. USDA is now reviewing and revising existing regulations used to administer the FSA. USDA will repromulgate these regulations, as amended, to provide up-to-date rules for testing seed, improve standards for certified seed, change rules for sampling new and different containers of seed, and clarify definitions and other provisions in light of current marketing practices and improved seed testing technology.

Specific problem areas are:

- (1) Handling complaints promptly. USDA investigates and takes action on complaints of alleged violations of the FSA, mostly from State seed regulatory agencies that cooperate with USDA. Slow action draws criticism from State agencies and the seed dealers regulated.
- (2) Enforcing seed laws uniformly. Variability of State programs and unequal cooperation by State agencies results in unequal administration of the Federal law.
- (3) Sampling of imported seeds. U.S. Customs agents sample the seed at the ports of entry and forward the samples to USDA seed laboratories. USDA tests the samples and admits or rejects the seed. Failure to sample, misidentification of seed samples, or delays in sampling affect the efficiency and effectiveness of the program. The risk of undesirable seeds coming into the United States is increased by the failure to sample at the port of entry. This risk is diminished by subsequent sampling at the State level.
- (4) Regulating labeling of seed varieties. The FSA requires labeling and prohibits false labeling. With some seeds, it is impossible to identify the variety by seed characteristics; it is necessary for anyone interested in determining the variety of such seeds to subject them to special biochemical tests or grow them in field plots to differentiate varieties. Some seedsmen question the methods mandated by USDA and the interpretations of the results.

USDA held public meetings in September 1979 in Memphis and Denver, and invited all interested parties to express their views on the effect the FSA has on their business practices. We

Alternatives Under Consideration

USDA held public meetings in September 1979 in Memphis and Denver, and invited all interested parties to express their views on the effect the FSA has on their business practices. We

are considering the comments and letters we received in a study of the FSA now underway. When we have evaluated this new information, it should provide guidance for possible alternative strategies.

They are:

(A) No change in the regulations. The current regulations explain the requirements of the FSA, add definitions, specify kinds of seed that are subject to the FSA, prescribe rules for sampling and testing, and set forth standards for certain purposes. Possible advantages of this alternative are consistency (status quo), avoidance of controversy, and no cost to the Government or the industry to implement change. The disadvantage is that the problems discussed in the previous section will continue.

(B) Amend the regulations to make possible improvements in the current system. USDA expects many changes to have the support of all affected parties. Specific changes cannot be identified at this time because studies are not yet completed. One change (mandated by E.O. 12044) expected to have the support of all affected parties is the revision into "Plain English." Others will be controversial. Hearings will air controversial issues (such as those listed under "Statement of Problem," in addition to any others which might arise) and will, hopefully, shed light on suitable solutions. The regulations need to be updated because of developments in technology and seed marketing. For example, seed of new plant populations is being sold, there are more seed products designed for the apartment dweller or mini-gardener, and additional methods of measuring seed quality exist. No existing regulations pertain to such seed and methods. Technical bodies of the State agencies have recommended to USDA changes in the technical rules for testing and standards for certified seed. Some other contemplated amendments would involve adding more kinds of seeds to the list of seeds currently subject to the FSA, preinoculated and hermetically sealed seed, variety status and naming, recordkeeping, and the procedures for sampling seed. Most interested parties urge uniform regulations. In those instances when the FSA is different from the consensus of the States, the FSA should be changed.

(C) Amend authorizing legislation to change the mandate for regulations, such as: delete certain sections of the law completely (such as rules for testing), change the approach from "truth-in-labeling" (a system whereby certain items are required to be shown on the label and no items appearing on the label can be false or misleading in

any respect) to grades for quality which would include all or part of the current labeling requirements (such as USDA #1 or Grade A), and/or require permits so the shipper is licensed to ship seed subject to revocation of license if the shipper fails to meet certain standards, or require compulsory inspection by State or Federal agents before marketing. The current system is a truth-in-labeling and spot-check-inspection system. It is not perfect. The spot-check-inspections are done by the States, and violations are reported to USDA. Not all States participate fully in reporting violations. Improvement could be obtained by encouraging participation by those States that are inactive or by Federal takeover of inspections. Cost-benefit analysis may justify the current inspection system. The freedom to produce and distribute seeds without inspection or constraint simplifies the distribution system and minimizes the regulatory burden. On the other hand, the current system may not suffice to protect consumers from faulty seed which may cause crop losses. A farmer's crop may be lost before the fault in the seed is detected. Premarket inspection and a pedigree system (such as the certification program) might reduce errors.

Summary of Benefits

Sectors Affected: Seed industry; growers, wholesale trade (including importing), and retail trade; seed testing laboratories; USDA; State seed regulatory and seed certifying agencies; farmers, gardeners, and other seed users; and the U.S. Treasury Department's Bureau of Customs.

Seed laboratories and State agencies will benefit by being able to use the same rules for State and Federal work. Farmers and gardeners will benefit by getting more accurately labeled seed, resulting in fewer crop losses and better quality crops. Revised regulations would improve compliance and enforcement because improving the wording of the regulations would minimize misunderstandings (such as arise in a section that contains many provisos). Many complaints are technical, arising from the shipper's misunderstanding of the regulations. USDA now receives approximately 1,000 violation complaints each year, and USDA expects it could handle the resultant fewer complaints more promptly, avoid the problems of currently drawn-out proceedings, thus improving relations with the State agencies and seed dealers at all marketing levels. The cooperative agreements with the States would be more effective under improved

regulations, which could help overcome unequal enforcement in the States. Under a more streamlined enforcement system States would be expected to cooperate more than they do now. Adoption of new rules for sampling and testing seed and changes in standards for certified seed would promote uniformity and effectiveness of seed regulations and the administration of seed laws. The accuracy of seed labeling would be enhanced to the benefit of seed users. Also, changing lists of noxious-weed seed for imported seed to agree with regulations under the Federal Noxious-Weed Act, administered by APHIS, would facilitate cooperation between the two agencies, APHIS and AMS, for the inspection of imported seeds and commodities infested with weed seed. (This action could be taken under all three of the alternatives previously listed.) It may be possible and advantageous to relieve Customs officials of the burden of sampling imported seed. The benefit would arise from reducing the delay through Customs and placing the sampling responsibility on an agency accustomed to handling seed. This change would place the enforcement of the import provisions of the FSA in one Government department.

Summary of Costs

Sectors Affected: USDA; and State seed regulatory and certifying agencies.

The FSA appropriation USDA requested for Fiscal Year 1981 is about \$1.4 million. USDA will incur only minor administrative costs in improving the wording of the regulations. However, the Department may need additional Federal funds for seed inspection and testing, ranging from about \$300,000 to \$5 million annually (based on 1979 data), depending on the type of testing or inspection it uses to assure truthful labeling. If the proposed amendments result in improved seed inspection in States that are not cooperating, then Federal cost increase will be minimal, but if the Federal Government totally assumed the inspection in the approximately 20 States that are inactive, the costs will be high. We do not know what States spend now or what increased costs the States would have if activity were changed. The seed dealers are now required to label seed, and the changes that can be made in the regulations without basic statutory change should not create a significant change in costs to seed dealers. Most labels are changed constantly depending on the seed being marketed and would not be affected on a one-time basis.

USDA presently contemplates no statutory changes that would create a cost burden to the industry. Pass-through costs to consumers for the amendments contemplated would be minimal, because there would be minimal additional burden or cost to seedsmen. Transferring responsibility for sampling imported seeds from Customs to USDA probably would not result in a shift of funds from Customs to USDA because sampling seed comprises only a small portion of Customs inspectors' time and cost. We do not anticipate any significant increase in cost to USDA for sampling.

Related Regulations and Actions

Internal: USDA has proposed amendments to the FSA, but is withholding further action pending completion of two detailed studies of the program. The contemplated amendments to the regulations would not be contrary to the proposed amendments to the FSA that USDA is considering. The proposed amendments to the FSA are intended to clarify wording, update certain provisions, and delete provisions that are obsolete or unnecessary.

The Plant Variety Protection Act (7 U.S.C. § 2321 *et seq.*) that this Agency administers interacts with the FSA in certain instances regarding determination of variety status and prohibition of selling certain protected varieties unless the seed is certified.

Seed imports that are subject to the FSA are inspected by AMS under that Act for noxious weeds. Imports of all other commodities must be inspected for certain weed species under the Federal Noxious Weed Act (7 U.S.C. § 2321 *et seq.*), which APHIS administers. AMS has held informal discussions with APHIS regarding cooperative inspection of imported seed and identification of weed seeds in other commodities.

External: State seed laws and regulations are similar to but not required to conform with the FSA.

Active Government Collaboration

AMS has already worked with State regulatory agencies in developing ideas for the proposed amendments and will continue to develop a set of proposed regulations. AMS will be in communication with Customs in connection with import sampling matters.

Timetable

USDA has a limited study underway regarding scientific aspects of the FSA and has another general study planned to more broadly evaluate the FSA. If the Department decides to amend the

regulations, the following estimated dates are applicable:

NPRM—Spring 1981.

Public Comment Period—Minimum of 60 days following NPRM.

Public Hearing—Following NPRM.

Final Rule—Fall 1981.

Regulatory Analysis—Will be prepared as part of the rulemaking process.

Final Rule Effective—Spring 1982.

In addition, USDA is proposing specific amendments in connection with up-to-date rules for testing seeds and modifying standards for certified seed.

The timetable is as follows:

NPRM—December 1980.

Public Hearings—December 1980 in Denver, Colorado, and Washington, DC.

Final Rule—February 1981.

Regulatory Analysis—Will be prepared as part of the rulemaking process.

Final Rule Effective—February 1981.

Available Documents

The following documents are available from the Agency Contact listed below:

Background: "Public meetings on the Federal Seed Act," August 1979.

Federal Seed Act (7 U.S.C. § 1551 *et seq.*) and regulations (7 CFR Parts 201 and 202).

Agency Contact

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USDA—AMS

The following entry involves a formal rulemaking procedure as required by the Agricultural Marketing Agreement Act and set forth in the Administrative Procedure Act. Readers should note the description of the procedure and the status of the action as described in the Statement of Problem. This procedural requirement precludes any conclusionary statements, such as estimates of benefits or costs, in the entry at the current stage of the proceeding.

Regulatory Treatment of Reconstituted Milk in All Federal Milk Marketing Orders (7 CFR Parts 1000-1139*)

Legal Authority

Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. § 601.

Reason for Including This Entry

The Department of Agriculture (USDA) includes this entry because of major interest on the part of consumers and industry.

Statement of Problem

On January 1, 1980, there were 47 Federal milk marketing orders in the United States, each covering a specific geographic area in which milk is sold. Through these milk marketing orders, the Federal Government establishes minimum prices to producers for about 65 percent of all U.S. produced milk and about 80 percent of all U.S. Grade A milk. Much of the remaining Grade A milk not regulated by Federal orders is priced under State regulations. Grade B milk (about 17 percent of the total U.S. production) is produced under less stringent farm sanitation standards than Grade A milk and, under present State health regulations, cannot be sold for drinking purposes and is used to produce butter, dry milk, cheese, and other manufactured milk products. Grade B milk is not regulated under Federal orders. About half of the Grade B milk in the United States is produced in Minnesota and Wisconsin.

The Department is presently analyzing the potential economic impacts of a proposal by the Community Nutrition Institute (CNI), a fluid (drinking) milk distributor, and three individual consumers to change the regulatory treatment of reconstituted milk (made by mixing nonfat dry milk, milk fat and water) under all Federal milk marketing orders. A preliminary impact statement has been completed.

USDA undertook the analysis because the Secretary must decide whether or not a hearing should be held on the CNI proposal or any related proposals for changes in the orders. If USDA calls a hearing, the Secretary must decide, from the evidence presented in a hearing, if, and how, the regulatory treatment of reconstituted milk in the Federal milk marketing orders should be changed.

The Agricultural Marketing Agreement Act of 1937 (AMAA), as amended, provides authority for establishing Federal milk marketing orders and for amending such orders. The Act's objective is to establish and maintain orderly marketing conditions for agricultural products in interstate

commerce so as to provide an orderly flow of the supply of products to market in order to avoid unreasonable fluctuations in supplies and prices.

The Agricultural Marketing Agreement Act, the Administrative Procedure Act, and the Department's rules set forth the procedures for establishing or amending orders. According to the AMAA, whenever the Secretary has reason to believe USDA's issuance of an order (or its amendment) may tend to accomplish the objectives of the Act, he may give notice of a hearing on the proposal. From the time of announcing a hearing until the Secretary renders a final decision, the Federal officials directly involved in developing and rendering the decision are restricted from "ex parte" communications—any discussion of the issues except on the hearing record. At formal hearings, evidence is introduced by interested members of the industry and general public. On the basis of the evidence and briefs submitted by interested persons, a decision is recommended and published in the *Federal Register*. Additional time must then be allowed by USDA for filing exceptions to the recommended decision. Then, the Secretary issues a final decision. If the Secretary decides that no order or amendments should be adopted, then the proceeding is terminated.

If the final decision is that a new or amended order should be issued, USDA must conduct a referendum among producers selling milk in the affected Federal order market area. Farmer cooperatives have authority to vote for all of their producer members. If at least two-thirds (three-fourths in certain cases) of the producers voting in a market affirm the proposed new order or amended order, then USDA issues the order. If, however, the referendum fails, the order is terminated or not issued.

Although the regulations apply to handlers, the primary impact of the reconstituted milk regulations falls on prices paid for milk to the dairy producers and by fluid milk consumers in the Federal milk order areas. Secondary price impacts are on dairy producers outside those areas and consumers of manufactured milk products throughout the country.

Federal orders require handlers who buy Grade A milk (grade being defined by state sanitary standards) from dairy farmers or their cooperative associations and who distribute it in the specified market order area to pay at least minimum milk prices depending on how the milk is used. It is the use of the milk that determines the "class" in which it is priced. If the milk is used in

hard manufactured products such as cheese, butter, dry whole milk, and nonfat dry milk, a handler pays milk producers the lowest price (Class III price in most orders). The Class III price is set equal to the average price that manufacturing plants pay per 100 pounds of Grade B milk in the Minnesota-Wisconsin area (usually referred to as the M-W price). This price is determined by a statistical series maintained by USDA and is essentially the same in all Federal orders across the United States. Most orders also provide for a middle class—for such products as cottage cheese and ice cream—with a Class II price slightly higher than the M-W price.

Handlers must pay a higher minimum price for milk used for fluid consumption ("Class I" use), which is determined each month by a formula in the order which adds a designated amount—Class I differential—to the M-W price for the second preceding month. Although different in each Federal order, the Class I differentials are related to each other in many orders. In Federal orders east of the Rocky Mountains, the minimum Class I price per 100 pounds of milk is approximately the M-W price plus 90 cents plus 15 cents per 100 miles the specific order area is located from Eau Claire, Wisconsin. For example, the minimum Class I price in the southeastern Florida market order is set \$3.15 above the M-W price, i.e., 90 cents plus \$2.25 for the approximately 1,500 miles the order area is from Eau Claire. The minimum Class I prices set in some orders located in the far West are less than those calculated with this formula. Under most Federal orders, the payments by all handlers in the market for regulated milk used in different classes are pooled, and farmers are paid on the basis of an average marketwide value of milk in all uses. In three markets, blend prices to producers are computed on an individual handler basis.

A market administrator for each marketing order operates the pricing pool through which farmers receive the blend price, and also audits all handlers to assure that farmers receive the minimum designated prices.

Reconstituted milk is subject to regulation by Federal orders. When processed for drinking purposes, reconstituted milk sold in a Federal order market is classified by the order as Class I milk (as are other milk products processed for fluid consumption). The allocation provisions of milk orders require complete allocation by handlers of reconstituted milk made from purchased powder to a

handler's Class III use or Class II use. If a handler has insufficient Class III and Class II use to which such reconstituted milk can be allocated, all orders require it to be allocated to Class I use. For such reconstituted milk allocated to Class I use, a handler is charged an amount equal to the difference between the order's Class I and Class III prices. The petition for rulemaking by the Community Nutrition Institute and others suggests that eliminating this so-called "compensatory" payment on reconstituted milk would reduce the product's cost to consumers and further suggests these payments are not essential to the objectives of the milk order program.

This treatment of such reconstituted milk under Federal orders is a part of the overall means by which milk from other areas that comes into a market is regulated under the order for that market. Regulated handlers may receive milk not only from producers but from other sources as well, such as bulk milk or powder from other Federal order markets or from unregulated plants. It is necessary in each order to establish a procedure for allocating all of a handler's receipts from the various sources to his use of milk to determine how much producer milk is to be priced in each class.

The thrust of the proposal by CNI and others is to remove reconstituted milk from the Class I pricing provisions of all Federal milk orders and in effect reclassify such milk in the lowest class. The proposal would do this by (1) removing reconstituted milk products from the definition of "other source milk" for the purpose of eliminating the "down-allocation" (placing it in a lower classification) of milk ingredients used in such products and (2) eliminating the requirement that handlers who are processors of reconstituted milk products make a "compensatory payment" on such products assigned to Class I use.

Alternatives Under Consideration

The Secretary must decide if a hearing should be held to consider the reconstituted milk proposal. A preliminary impact statement has been prepared for use in reaching this decision, and USDA has requested public comment. (See *Federal Register*, November 17, 1980.) If a hearing is convened, the Secretary must decide whether or not proposed changes should be considered in the orders.

Summary of Benefits

Not available now.

Summary of costs

Not available now.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

No dates for hearings or subsequent decision stages can be established until USDA reaches a decision on whether to hold a hearing.

Available Documents

CNI proposal. (Available from Robert Groene, Room 2755-S, USDA, Washington, DC 20250; Tel. (202) 447-4831.)

A preliminary impact statement is available for public comment through January 2, 1981.

Agency Contact

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USDA—Food Safety and Quality Service**Proposed Net Weight Regulations (9 CFR Parts 318* and 381*)****Legal Authority**

Federal Meat Inspection Act, 21 U.S.C. § 453(h)(5) *et seq.*; Poultry Products Inspection Act, 21 U.S.C. § 343(e) *et seq.*

Reason for Including This Entry

The U.S. Department of Agriculture (USDA) has received a number of complaints from consumers and State officials about current Federal net weight regulations for meat and poultry products. These complaints concern both the accuracy of net weight labels under existing regulations, and the enforceability of the regulations. USDA has proposed standardized procedures for enforcing net weight regulations which will assure more accurate consumer and marketing information.

Statement of Problem

Present USDA net weight regulations for meat products (9 CFR 317.2(h)) and poultry products (9 CFR 381.121) permit "reasonable variations" in weight caused by the loss or gain of moisture during distribution.

In 1972, a District Court voided Federal net weight regulations due to

vagueness of the permitted "reasonable variations."

USDA responded to the court ruling in December 1973 by proposing new net weight regulations, which set forth numerical allowable variations and procedures for determining allowable net weight variations at the producing plant and during distribution. Liquids that drained from the product would have been considered part of the net weight. For compliance purposes, firms would have had to implement net weight quality control programs. The compliance test required that the average weight of the samples equal or exceed the declared net weight, and that negative differences between actual and declared net weights not exceed the numerical variations. Further, the proposal required labels for bulk shipments to contain at least a quantity count of containers.

Public comments on the proposal expressed widespread dissatisfaction. Consumers wanted labels which excluded water, blood, and liquids absorbed by packing materials from net weight. Industry complained that the numerical variations were too "tight," and that the regulations should be directed only to consumer packages, not bulk shipments. Some comments also objected to Federal preemption of State and local rules.

The proposal was never adopted.

In October 1977, the State of California filed a petition with USDA requesting new regulations which would permit States and municipalities to enforce strict standards at the time of consumer purchase. (State and local regulatory agencies enforce the Federal net weight regulations.) Officials of 47 other States, several farm organizations, and consumer groups cosigned the petition.

According to the petition, the Supreme Court decision in *Rath Packing Company v. M. H. Becker, et al.* in March 1977 had left States without adequate authority to enforce their own net weight regulations. The Court had held that States and municipalities were preempted from enforcing standards that were stricter than Federal regulations, which are based on "reasonable variations." Since the term "reasonable variations" does not provide a quantifiable standard, the petition contended that States and municipalities were, in effect, precluded from enforcing net weights at retail.

In addition, consumers have complained that net weight statements on packages of meat and poultry do not provide accurate information on the amount of usable product in the package. The present regulation counts

free liquid as part of the net weight. (Free liquid is liquid that has seeped out of a product into the package but has not been absorbed by the packaging material.) As a result of moisture loss and free liquid, consumers have frequently complained that they have no way of knowing how much usable product they are getting for their money.

In response to the California petition and consumer complaints, USDA's Food Safety and Quality Service (FSQS) published proposed Federal net weight regulations on December 2, 1977. The principal features of the proposal were as follows:

- Free liquids, as well as liquids, fats, and solids absorbed by packaging material, would be excluded from a product's net weight. Thus, net weight would be based on a drained weight system, as opposed to a wet tare or dry tare. (Tare is the quantity subtracted from gross weight to determine net weight.) Under a wet tare, net weight equals package and contents minus the weight of the packaging material and liquids absorbed by the packaging material. (Free liquid is included in the net weight.) Under a dry tare, net weight equals package and contents minus the weight of the dry packaging material. (Again, free liquid is included.)

- The present allowance for moisture loss due to evaporation during distribution would be eliminated. The average weight for products from the same lot would be required to equal or exceed the labeled net weight. Single packages, however, would be permitted actual weights below the labeled weight by a specified amount.

- Federal net weight standards (which do not currently exist) would be established for bulk shipments of wholesale-sized packages.

All federally-inspected meat and poultry plants would be required to implement an FSQS-approved quality control program for net weight; no such requirements currently exist.

- After the proposal appeared in the *Federal Register*, USDA received over 3,000 comments, which indicated widespread disagreement concerning the economic impact of the new regulations and the extent to which new regulations were needed to improve the accuracy of net weight labeling. Since the closing of the comment period, FSQS has commissioned two economic studies. The first, "Analysis of Proposed Regulations on Net Weight Labeling" (October 1978), was carried out by the Consumer Federation of America. The second of these, "Assessment of Proposed Net Weight Labeling Regulation," conducted by USDA's Economics, Statistics, and Cooperatives

Service (ESCS), was made available for comment on August 31, 1979. The comment period closed on October 30, 1979.

Alternatives Under Consideration

The alternatives USDA considered are:

(A) The current FSQS proposal. It is based on the studies, comments, reviews, analyses, and efforts by the Food Safety and Quality Service and the Food and Drug Administration (FDA) to develop more uniform net weight labeling proposals following publication of previous proposals in 1973 and 1977. FDA's proposal is similar to that of FSQS, but covers additional categories of food. FDA published it as a companion entry to FSQS's NPRM published in the *Federal Register* on August 8, 1980.

The currently permitted "reasonable variations" between labeled net weight and actual net weight would be replaced by explicit numerical allowances. These allowable numerical variations are based on recognized, unavoidable deviations that occur during manufacture; they were determined in consultation with the National Bureau of Standards. The numerical variations do not include allowances for moisture loss, as do present regulations. In addition to explicit variations on individual packages, this alternative would also set tolerances for bulk shipments.

This proposal would establish specific sampling procedures to assure consistent weight measurements and compliance determinations by Federal, State, and local personnel. FSQS-approved quality control programs for checking net weight compliance would remain voluntary.

In an effort to treat meat and poultry products and other food products equitably, this proposal would be, to the maximum extent possible, compatible with the Food and Drug Administration's net weight proposal. Compatibility is sought in the definition of tare, actions taken on out-of-compliance products, procedures for checking compliance, and sampling plans.

FSQS was unable to determine on the basis of analysis whether liquids absorbed by packaging material should be included or excluded from determination of net weight. (Free liquids are included.) As such, FSQS included both methods of determining net weight in the proposal. The Agency will choose between the two methods based on public comments on the proposal.

(B) FSQS also considered two options previously proposed in 1973 and 1977. (These are discussed above.) The main differences between these two alternatives and alternative A are the definition of tare and the establishment of mandatory net weight quality control programs. Neither of these options is compatible with the FDA proposal; they are both more expensive than alternative A, but do not provide more accurate labeling. Mandatory quality control would be very expensive; it would cost the industry between \$56 and \$114 million for personnel. (This would be offset by savings of \$3.1 million per year to FSQS.) As stated, the definition of tare does not by itself affect the price of useable product. However, the 1977 proposal, which includes a drained weight system, could lead to price increases because such a system would require processors to change processing methods and/or incur added costs to adopt procedures for correct labeling under this system. The dry tare system considered in the 1973 proposal would not have effects of this nature. Because free liquid is included in net weight, producers would not need to change processing methods, nor would they have to develop procedures to estimate the weight of free liquids in packages.

(C) This alternative was originally proposed by the Grocery Manufacturers of America, but it was never fully developed. Determination of tare would vary depending on the product. This alternative would allow variations for specific products that lose or gain moisture during the course of standard production practices or while the product is in the food distribution channel. State or local agencies would sample packages of a product to check for net weight compliance. If the sample were not in compliance, packages from the sampled lot would be collected and sent to designated laboratories to determine the cause of noncompliance. In the meantime, a hold would be placed on further distribution and sale of the lot or lots sampled.

FSQS estimates that this alternative would take 2 to 4 years to implement. The one-time costs to industry to estimate moisture losses or gains could be quite high. For the majority of meat and poultry products, products held for results of compliance testing would spoil, causing large economic losses. Further, this option is not compatible with FDA's proposal.

(D) This alternative is modeled on procedures being developed by the Codex Alimentarius Commission of the United Nations, an organization that

sets international food standards. (The Commission has not formally approved its own net weight proposal.) Net weight compliance would be based on the average net weight of packages at the time of packaging. Checking for compliance is supplemented by limited inspections by State and local agencies at retail. This alternative would require at least two-thirds of all sample packages drawn from a lot to have a net weight of contents equal to or in excess of the amount stated on the label.

The requirement that at least two-thirds of the packages sampled must equal or exceed the labeled net weight represents a major departure from the current method of determining compliance and from the FDA proposal. Both these methods are based on the average weight of packages. The two-thirds requirement would undoubtedly cause producers to overpack. Again, this would not change the total price of a package, but it would result in relative shifts in the labeled price per pound. Standards and procedures for enforcement under this alternative have not been worked out in sufficient detail to assess their impacts.

The objectives which were used to choose between alternatives were: 1) ease of enforcement of the regulations by FSQS and State and local regulatory agencies, 2) ease of compliance by industry, and 3) compatibility with the Food and Drug Administration's net weight proposal.

One might expect that the desirability of a particular net weight regulation would also be evaluated in terms of its usefulness to the consumer as a generator of information for consumers, and its effects on the production, labeling, and pricing practices of the industry. Unfortunately, evidence concerning the utility to consumers provides little basis for choosing between possible net weight regulations. Some of the options discussed above eliminate or reduce free liquid from calculation of a product's net weight; however, as the ESCS study shows, the consumer will probably pay the same price for the same amount of usable product under any net weight definition. If revised regulations require producers to alter the labeled net weight on a package, they can be expected to alter correspondingly the price per pound so that they receive the same price for the package as under existing regulations. (If producers incur additional costs to comply with new net weight regulations, the consumer may pay more per pound.) In other words, consumers are not currently paying for free liquid. They might be paying for packages that

contain free liquid, but if producers are required to eliminate free liquid, the price of the package would not drop.

Further, elimination of free liquid from the calculation of net weight would not give the consumer a more accurately labeled package. Accuracy is controlled by the size of allowable variations, not by the definition of tare.

Likewise, it is not possible to predict industry's responses to various definitions of tare. For instance, under a drained weight system, producers might be expected to eliminate free liquid from their packages because free liquid would no longer be counted as part of a package's net weight. However, free liquid often results from processing methods that would be very expensive to modify. The producer might choose instead to lower the labeled net weight on each package. However, USDA would expect producers who lower the labeled net weight to raise the labeled price per pound. The resulting increase in the labeled price per pound—estimated at approximately 4 cents—might be a larger rise than the producer is willing to accept. Because of trade-offs between the cost of packaging materials, the cost of processing, the labeled price per pound a producer is willing to accept for his product, and the appearance the producer wants to give his packaged product, it is not possible to predict producers' responses to any option.

Considering both its effectiveness in meeting the stated objectives and the avoidance of undesirable impacts, FSQS selected alternative A over the other options because:

- It promotes easy enforcement of net weight regulations by State and local agencies.
- It would generate net weight statements at least comparably accurate to all other options, and would establish numerically allowable variations which are not present in existing regulations.
- It would not force processors to increase expenses to comply.
- It is the only option compatible with FDA's net weight proposal.
- It would not increase enforcement costs for FSQS or State and local regulatory agencies.

Summary of Benefits

Sectors Affected: Wholesale and retail trade of meat and poultry; consumers of these products; State and local government.

There would be four benefits to establishing a more objective (or quantifiable) Federal net weight standard.

First, consumers would benefit from more accurate net weights at retail. In

buying a chicken, ground beef, or bacon, a consumer will almost always look at the price per pound. Without accurate information on the weight of the product, however, shoppers cannot make accurate price comparisons. With an objective standard, enforceable at retail, consumers would be in a better position to make price comparisons. (The total value of meat and poultry products sold in 1979 exceeded \$60 billion.)

Second, there would be more accurate information on meat and poultry products at all points in the distribution and marketing chain. For example, the buyers of bulk-packed products would have a clearer standard for checking the weights of shipments they receive. Such a standard would be helpful, particularly to small volume buyers who may now be reluctant to adjust invoices to correct for underweight shipments.

Third, because States and municipalities would have a more enforceable standard at retail, the net weight standard would reduce the risk of deliberate fraud. Although ESCS' study found no evidence of consistent or flagrant short-weighting of meat and poultry products now in the marketplace, State officials have stated that it could occur unless there is an enforceable Federal standard in place.

Fourth, this proposal will make FDA's and USDA's approaches to regulating net weight labeling more compatible.

Summary of Costs

Sectors Affected: Manufacturing, wholesale and retail trade of meats and poultry; and consumers of these products.

The regulation's effect on the food industry will vary with the type of tare required. A dry tare system would not increase producers' costs, and could reduce their costs in those States which now use wet or drained weight tares for checking compliance if they use more expensive production methods to comply with these tare systems. Under a wet tare system, producers might have to alter their labeling or processing practices, particularly for those products, such as chicken, whose packaging materials absorb a significant amount of moisture. Since the absorbed moisture would not be counted as part of net weight, producers would have to either overpack or reduce the labeled net weight. As we have noted, these practices would lead to changes in the labeled price per pound, but no change in the price per usable pound. FSQS cannot accurately predict consumers' reaction to this apparent price shift; it would depend on the size of the shift, which is estimated not to exceed 4 cents

per pound, and the degree and effectiveness of consumer education efforts. Producers are already complying with wet tare systems in some States, but FSQS does not know the costs of compliance. Presumably producers are able to pass along the costs of compliance, if any, to consumers. A wet tare system would also entail a small cost for product loss or repackaging resulting from compliance checks because State and local agencies must open packages to weigh the packing material and absorbed liquids. No such cost is associated with dry tare.

There will be no change in costs to Federal, State, or local regulatory agencies under either tare definition.

Related Regulations and Actions

Internal: Proposed Rule for Voluntary Meat and Poultry Plant Quality Control System (44 FR 53526, September 14, 1979).

External: Food and Drug Administration, 21 CFR 501.105q. Federal Trade Commission, 16 CFR 500.22.

Active Government Collaboration

FSQS and the Food and Drug Administration (FDA) have held a series of meetings over the past year or so to develop, as far as possible, a common approach to net weight regulations. In late 1977 and early 1978, the two agencies held several public hearings on the issue of net weights.

In 1975, USDA, FDA, Federal Trade Commission, and the National Bureau of Standards formed an interagency net weight committee. The committee has met intermittently since then.

In the past 2 years, FSQS officials have consulted regularly with State and local weights and measures officials and State departments of agriculture.

Timetable

Public Comment Period—Extending to early January 1981.

Final Rule—Summer 1981.

Regulatory Analysis—A final Regulatory Analysis will be performed as part of the final rulemaking process.

Available Documents

Proposed Regulations for Net Weight Labeling (reproposal, actually)—45 FR 53002, August 8, 1980. Public comments on this proposal are also available, as is a Draft Regulatory Analysis.

Notice of availability of ESCS study—44 FR 51275, August 31, 1979. Comment period on ESCS study closed October 30, 1979.

Net Weight Regulations for Meat and Poultry Products, 9 CFR 317.2(h)(2), 9 CFR 381.121(e)(6).

Proposed Regulations for Meat and Poultry Products—42 FR 61279, December 2, 1977.

Consumer Federation of America, "Analysis of Proposed Regulations on Net Weight Labeling," October 1978.

General Accounting Office, "Proposed Changes in Meat and Poultry Net Weight Labeling Regulations Based on Insufficient Data," CED-79-28, December 20, 1978.

Economics, Statistics, and Cooperatives Service, USDA, "Assessment of Proposed Net Weight Labeling Regulation," August 1978. Public comments on this study are also available. Docket number 79-27236.

Agency Contract

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DEPARTMENT OF COMMERCE

Maritime Administration

Construction-Differential Subsidy Repayment; Total Repayment Policy (46 CFR Part 276)

Legal Authority

Merchant Marine Act, 1936, as amended, §§ 204(b), 207, 506, and 714, 46 U.S.C. §§ 1114(b), 1117, 1156, and 1204.

Reason for Including This Entry

The Maritime Administration (MarAd) is including this entry because the regulation sets a major precedent for the administration of the maritime subsidy programs. The regulation would establish a policy for total repayment of construction-differential subsidy (CDS) in exchange for the removal of domestic trade restrictions prescribed in § 506 of the Merchant Marine Act, 1936, as amended (the Act). However, the annual impact of the regulation on the economy may not exceed \$50 million, and is not expected to impose a major increase in costs or prices.

Statement of Problem

Pursuant to authority in Title V of the Act, MarAd grants financial aid in the form of construction-differential subsidy (CDS) for the construction of vessels for operation in the U.S. foreign trade. The purpose of the regulation is to establish guidelines for deciding whether to

permit vessels built with such aid to enter the domestic trade and operate without restriction in exchange for the payback of the CDS attributable to the remaining economic useful life of the vessel. These guidelines will be designed to protect investors in and operators of vessels intended exclusively for the domestic trade, shipbuilders, shippers, MarAd, consumers, and the general public.

Sections 501-507 of the Act (46 U.S.C. §§ 1151-1157) contain the provisions relating to eligibility and conditions for the award of CDS by the Secretary of Commerce (Secretary). The authority to grant these awards rests, by delegation, with the Maritime Subsidy Board within MarAd. Essentially, CDS represents the excess of the cost of constructing (including reconstructing or reconditioning in exceptional cases) a vessel in a U.S. shipyard (excluding the cost of national defense features) over the fair and reasonable estimated cost of its construction in a representative foreign shipbuilding center. This excess is paid by MarAd to the U.S. shipyard only for a vessel "to be used in the foreign commerce of the United States," as defined in § 905 of the Act (46 U.S.C. § 1244).

Section 506 of the Act (46 U.S.C. § 1156) requires the owner of every vessel for which CDS has been paid to agree that the vessel be operated "exclusively in foreign trade" or in foreign trade with limited domestic trade operation as specified in this section. If such a vessel engages in this limited domestic operation, the owner must repay a portion of the CDS. Section 506 also provides for the temporary transfer of such a vessel to services other than those covered by the owner's CDS agreement for periods "not exceeding 6 months in any year," with the consent of the Secretary. A condition for consent to such temporary transfer is the agreement by the owner to repay, on conditions that the Secretary may prescribe, "an amount which bears the same proportion to CDS paid as such temporary period bears to the entire economic life of the vessel."

In addition to these express statutory provisions for partial repayment, the Secretary has discretionary authority to accept full repayment of CDS in return for the permanent removal of the domestic trading restrictions in § 506. The U.S. Supreme Court has affirmed this authority. (*Seatrains Shipbuilding Corp., et al. v. Shell Oil Co. et al.*, 100 S. Ct. 800 (1980).)

Consistent with this decision, MarAd proposed the regulation to provide, as a matter of sound policy, guidelines and procedures for approval of applications

to repay CDS, which MarAd can apply uniformly to all applicants.

Neither § 506 nor any other provision of the Act provides guidelines for determining the circumstances under which the total repayment of CDS is appropriate. In order to establish such guidelines MarAd is conducting an analysis to provide a basis for determining suitable factors and to estimate costs and benefits. The economic impact of the regulation will depend on these factors.

Recently MarAd published an interim regulation applying only to tankers of at least 100,000 deadweight tons. Ten existing CDS-built vessels are in this category. MarAd has received applications for the total repayment of CDS with respect to six of these vessels. Subsequently, applications for three of these vessels have been withdrawn.

Alternatives Under Consideration

The first alternative requiring consideration in any regulatory analysis is the "no-action" option. MarAd believes that adoption of a regulation is not a legal requirement and could exercise discretion in allowing the total repayment of CDS by adopting a case-by-case approach and making a determination on the individual merits of each application.

MarAd is considering whether it should adopt a single regulation for all CDS vessels, regardless of type, size, or employment pattern, or whether it should adopt separate regulations for various categories, however defined. A single regulation has the advantage of general applicability and simplicity but may not adequately reflect the unique aspects of the markets in which the various categories of vessels operate.

The choice of specific "exceptional circumstances" under which MarAd would grant permission for a vessel to operate in the domestic trade presents a number of potential alternatives and underlying factors to evaluate. If the factors are too restrictive, the interests of the CDS-built vessel's owner, MarAd, and the maritime industry may not be served. If they are too general, they raise questions concerning whether the non-subsidized fleet, in which there is considerable investment, will be equitably treated.

If no favorable opportunities exist for economic employment of a category of CDS-built vessels in the foreign trade for a protracted period that is longer than that of normal cyclical market downturns, MarAd might consider whether exceptional circumstances are present which would warrant approval of total CDS repayment in return for

removal of the restrictions on domestic trade operation of the vessel.

MarAd must consider potential impacts on competition in the development of these factors. The approval of an application for total repayment of CDS for a vessel can be expected to remove that vessel from the foreign trade for which it was intended, generating a potential competitive impact in that trade. Similarly the removal of the domestic trading restrictions may have a competitive impact in the domestic trades. Among the factors that MarAd might consider before approving an application is whether the operation of the vessel in the domestic trade would be likely to have any significant adverse impact on other vessels operating in that trade.

Finally, MarAd must consider two principal procedural alternatives to ensure that all interested parties have an opportunity to present their views. Under the first alternative, MarAd would publish in the *Federal Register* a notice of any application for the total repayment of CDS, and would allow a specified period for interested parties to submit written comments. As a second alternative, MarAd would hold a hearing or similar proceeding to provide an opportunity for all interested parties to provide data and analyses in support of their respective positions. The hearing requirement, however, would greatly increase the likelihood of delays in the decisionmaking process. These delays could have significantly adverse impacts on the applicant, as well as on any security interest of the Government with respect to any outstanding ship obligation guarantees or ship mortgage insurance.

MarAd must consider various hypotheses in order to prepare a Regulatory Analysis involving economic matters. The statements in this document concerning impacts are merely illustrative and are in no sense to be considered exhaustive or definitive.

Summary of Benefits

Sectors Affected: Owners and operators of vessels built with CDS and intended for deep sea foreign transportation; owners and operators of vessels built without CDS and intended for deep sea domestic transportation; shipbuilding; shippers of commodities by U.S. deep sea foreign and domestic transportation and users of these commodities; MarAd; and the general public.

Fairness to all identifiable interests in the administration of the CDS program is the object of the regulation. The regulation can be expected to state the

factors MarAd will consider for removing a restriction on domestic trade operation that is required by the Act as a condition for receiving CDS assistance.

The regulation may limit total repayment of CDS in exchange for the removal of domestic trade restrictions to situations determined by MarAd to represent "exceptional circumstances," with guidelines provided for making this determination. Benefits would accrue to the owner or operator of an existing vessel that has no favorable opportunities for employment in the foreign trades for which it was originally built with CDS.

Since vessels built with CDS may have obligation guarantees or vessel mortgage insurance issued by MarAd under Title XI of the Act, the prospective default by the vessel owner may mean an imminent loss to the Government due to its payment of the debt (reduced by the amount of recovery through foreclosure sale), as well as the loss of any on-going benefit to the economy from the Government's CDS expenditure. MarAd may better preserve the value of its security interest by allowing the vessel to operate in the domestic trade in order to generate sufficient income to amortize its Government-guaranteed or -insured debt.

The guidelines to be adopted are intended to minimize any potential adverse impact on the U.S. shipbuilding market for the construction of vessels for the domestic trade. The regulation may significantly reduce uncertainties in this market. Other objectives are that owners of vessels built without CDS will not be subject to excess tonnage competition; shippers will be protected against unreasonably high rates; and the consuming public will not experience higher commodity prices resulting from unreasonably high freight rates.

MarAd's careful application of these guidelines should protect investment in domestic trade shipping, shippers of domestic trade cargoes, consumers of commodities shipped in the domestic trade; MarAd's security interests, and the general public.

By allowing repayment, the funds repaid become available for other Government purposes and the vessel can be actively employed. The general public may benefit through reallocation of the asset. A Regulatory Analysis is currently being prepared which will provide estimates of the potential benefits.

Summary of Costs

Sectors Affected: Owners and

operators of vessels built with CDS and intended for deep sea foreign transportation; owners and operators of vessels built without CDS and intended for deep sea domestic transportation; shipbuilding; shippers of commodities by U.S. deep sea foreign and domestic transportation, and users of these commodities; MarAd; and the general public.

Vessels built without CDS may face competition from CDS-built vessels for which owners have paid less than a full domestic construction price; shipbuilders may receive fewer shipbuilding orders; commodity shippers may pay higher freight rates; consumers may pay higher prices for commodities; and MarAd's financial risk may increase due to a lessened value of the vessel as security.

The costs and impacts that the regulation would impose, other than administrative costs which the regulation seeks to minimize, include possible adverse effects on existing vessels that were built without CDS primarily for the domestic trades, which may face increased competition, and on U.S. shipyards which might otherwise obtain orders for the construction of new vessels for the domestic trades. The Regulatory Analysis MarAd is currently preparing will provide estimates of these costs and impacts. Owners and operators of existing domestic trade vessels, which are not eligible for CDS aid, contend that the introduction of even a single additional vessel into the trade, through CDS repayment, would have significant impact on rates. Unlike liner trades with regulated tariffs, rates in the bulk trades are generally controlled by vessel availability, suitability, and location at any particular time. The domestic trades are relatively small, and few vessels are available at any given time, since most are in proprietary trades or under long-term charter. Thus, the addition of a single CDS vessel could temporarily reduce the profit potential of an existing owner. However, over time, the average charter rates obtained in the domestic trade might not be significantly affected.

While the regulation is intended to limit impacts on shipbuilding, shipyards in the United States could possibly lose an opportunity for new vessel construction for the domestic trade if a CDS vessel owner is allowed to make total repayment in exchange for the removal of domestic trade restrictions. In addition, the uncertainty of potential competition from other CDS vessels could further reduce the incentives for vessel construction for the domestic

trade. Since the Act expressly permits owners of vessels built with CDS to apply for permission to operate temporarily in domestic trades for periods not exceeding 6 months in any year, the policy reflected in the regulation does not create a completely new class of competing vessel. Also, when the foreign trades again provide favorable employment opportunities, new construction for these trades would probably occur.

Related Regulations and Actions

Internal: Participation by vessels built with CDS in the carriage of oil from Alaska in the domestic trade (46 CFR Part 250).

External: None.

Active Government Collaboration

MarAd encourages Federal agencies and State and local governmental bodies, as well as the general public, to participate in development of this regulation through submission of comments to the Agency Contact listed below.

Timetable

Final Rule—January 1981.

Regulatory Analysis—Although the economic impacts of the regulation may not exceed the thresholds requiring the preparation of a Regulatory Analysis, set forth in the agency procedure adopted to implement E.O. 12044, MarAd is now preparing a Regulatory Analysis because it considers the regulation to be a matter of sufficient policy significance to warrant such an analysis.

Available Documents

Comments received in response to the NPRM (45 FR 29610, May 5, 1980) are available for inspection in Room 3099B, Department of Commerce Building, 14th and E Streets, N.W., Washington, DC. An interim rule has been published in the *Federal Register* (45 FR 68393, October 15, 1980). The final Regulatory Analysis will be made available for inspection at the time the notice of final rulemaking is published in the *Federal Register*.

Agency Contact

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Requirements (23 CFR 635.410*)

Legal Authority

Surface Transportation Assistance Act of 1978, § 401; P.L. 95-599, 92 Stat. 2689.

Reason for Including This Entry

The Federal Highway Administration (FHWA) thinks this rule is important because it is controversial and could possibly increase construction costs in the Federal-aid highway program by 2 percent, or approximately \$150 million (in current year dollars) annually.

Statement of Problem

The Buy America provisions (§ 401) of the Surface Transportation Assistance Act (STAA) of 1978 require that all articles, materials, and supplies purchased with grant funds authorized under the Act must be of U.S. origin. The States, as recipients of the grant funds, are responsible for enforcing § 401.

Before Congress enacted STAA, suppliers of certain foreign products, including steel, were allowed to compete for contracts on Federal-aid highway projects. The pressure of foreign competition has been increasing and will continue. In fact, the General Accounting Office (GAO) found that, in 1976 and 1977, foreign-produced steel products valued at \$97.8 million (in 1976 and 1977 dollars) were used in Federal-aid highway construction projects.

Under STAA, the Department of Transportation (DOT) must develop and enforce a policy on procurement of foreign materials for projects funded by Federal-aid highway assistance. However, the Secretary of Transportation has retained the authority to waive the Buy America provisions under certain conditions. These include situations where domestic supplies are unavailable or where using them would increase the cost of the project by more than 10 percent.

Alternatives Under Consideration

The Buy America provisions were effective immediately and required implementation. Therefore, the FHWA issued an emergency regulation on November 17, 1978, to implement them. That regulation applied only to foreign structural steel.

The FHWA is considering continuing the provisions of the emergency rule because its approach is consistent with the legislative history of the Buy America provisions. Competition

between domestic and foreign sources for highway construction contracts generally has been limited to the structural steel market. Other products are abundant domestically or are not available in sufficient quantities from American sources to meet highway construction needs (e.g., petroleum and petroleum products).

The FHWA is considering whether materials used in Federal-aid construction projects over \$500,000 should meet the Buy America provisions. While fairly large quantities of petroleum products, such as fuel, lubricants, and asphalts, are used on all highway projects, domestic petroleum is not sufficiently and reasonably available to meet this need. Restrictions on the purchase of petroleum products undoubtedly would delay many construction projects and would be contrary to the legislative intent. Moreover, the statute clearly allows domestic preference only if the exclusion of foreign products would not increase project costs by more than 10 percent.

Summary of Benefits

Sectors Affected: Domestic steel industry, including blast furnaces and basic steel products manufacturing, steel foundries, and fabricated structural steel products manufacturing.

Reduction in the use of foreign products would give domestic suppliers more opportunities for contracts. The FHWA estimates that, from 1979 to 1982, the Bridge Replacement and Rehabilitation Program will use more than \$500 million (in 1980 dollars) annually in structural steel. The GAO estimates that 9.5 percent of the steel used annually in the Federal-aid highway program is from foreign sources. For the years 1976 and 1977, the GAO estimated that \$97.8 million in foreign steel products were used in the highway program. Domestic suppliers could have provided this steel.

Summary of Costs

Sectors Affected: Highway construction industry; States; and steel importing.

The increase of up to 10 percent in the cost of highway construction projects may affect all industries participating in these projects. The regulatory provisions would force contractors to find domestic sources for some of their steel and steel products. States would be required to bear additional administrative costs in order to evaluate bids. A limited number of steel importers could lose some import business.

The FHWA has estimated that the provisions of Buy America, which apply to approximately 87 percent of the Federal-aid authorization of \$35 billion over the years of 1979 to 1982, could increase construction costs by 2 percent, or \$150 million (in 1980 dollars) annually.

Because the States are responsible for administering the regulations, State administrative costs may increase. Further, projects could be delayed until the Secretary approved any necessary waivers.

Related Regulations and Actions

Internal: The Buy America regulation of the Urban Mass Transportation Administration (49 CFR Part 660).

External: None.

Active Government Collaboration

None.

Timetable

NPRM—November 30, 1980.

Draft Regulatory Analysis—Will accompany NPRM.

Available Documents

Emergency Rule—43 FR 53717, November 17, 1978.

Federal Highway Administration Docket 78-35.

GAO Report, "Foreign Source Procurement Funded through Federal Programs by States and Organizations," report number 1D-79-1, November 30, 1978.

All documents are available for review in the Office of the Chief Counsel, Room 4205, 400 Seventh Street, S.W., Washington, DC 20590.

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DEPARTMENT OF THE TREASURY

Alcohol, Tobacco, and Firearms Bureau

Accelerated Payment of Certain Tobacco Products Excise Taxes (27 CFR Parts 270* and 275*)

Legal Authority

Internal Revenue Code of 1954, 26 U.S.C. § 7805.

Reason for Including This Entry

The Treasury Department has proposed regulations which would accelerate the payment of tobacco

products excise taxes by large producers, a move which would decrease the Federal Government deficit by about \$144 million in FY 1981 and would net the Government an estimated \$10 million to \$15 million yearly.

Statement of Problem

Early this year, the Office of Management and Budget (OMB), Executive Office of the President, submitted to the U.S. Congress the U.S. Budget for FY 1981, which, among other things, established program trends that would improve the prospects for budgetary balance. In the U.S. Budget, several cash management initiatives were proposed by OMB to improve the management of Federal funds. One of those initiatives is the Tobacco Products Excise Tax Acceleration Project, which involves the Bureau of Alcohol, Tobacco, and Firearms (ATF).

This project would accelerate the collection of excise taxes of tobacco products from large manufacturers of tobacco products by (1) increasing the frequency of their excise tax payments from twice a month to weekly and (2) reducing the deferral period—the period between the time the collection period ends and the time the tax payment is due. (For purposes of this project, a large manufacturer of tobacco products is defined as an individual factory for which the annual excise tax payment is \$5 million or more.)

Currently, these tobacco product excise taxes are due within 15 days after each semimonthly collection period ends.

ATF is considering amending the regulations by requiring the large manufacturers of tobacco products to pay these excise tax payments within 3 days after each weekly collection period. The collection and deferral periods for small manufacturers of tobacco products (those who pay less than \$5 million) would remain unchanged. The Department of the Treasury estimated that the Federal Government would realize a reduction in the Federal Budget deficit of \$280 million in FY 1981 and \$8 million a year thereafter if another ATF proposal on electronic fund transfer is adopted for alcohol and tobacco products (refer to the Calendar entry entitled "Delivery of Certain Alcohol and Tobacco Products Excise Tax Payments via Electronic Fund Transfer").

The Federal Government could realize improved interest savings if ATF collects these excise taxes earlier than it does now. If ATF takes regulatory action, ATF would help improve the cash flow of the Federal Government and would reduce unnecessary

Government borrowing and associated interest costs.

Alternatives Under Consideration

One alternative to issuing final regulations would be to issue no regulations. ATF believes, however, that final regulations would be the better alternative, because they would instill in ATF and industry effective cash management practices and realize significant cash flow and cost-reduction savings to the Federal Government.

Summary of Benefits

Sectors Affected: The Federal Government.

The proposed rule would directly benefit the Federal Government. By reducing the collection period to 7 days from 15 days, the Federal Government would have the funds available 8 days sooner. By reducing the deferral period from 15 days to 3 days, the Federal Government would have the funds available an additional 12 days sooner. The combined effect of these two reductions is a 20-day acceleration in the cash flow.

Based on the tobacco excise tax collection of \$2.404 billion in FY 1979, a Treasury bill rate of 15.381 percent (interest rate as of March 10, 1980), and a 20-day savings in interest, ATF calculated a gross benefit (savings) to the Federal Government of \$20.261 million or a net benefit of \$13.505 million.

The accelerated excise tax payments would cause some year-end tax liabilities, which under existing regulations are paid in the next year, to be paid in the current year. This "receipts effect" would be \$144 million for FY 1981, based on budgetary receipts forecasts by OMB. The gross interest saving for FY 1981, including the interest on the year-end "receipts effect," would be \$14.5 million (based on 10 percent borrowing costs for FY 1981 forecasts by OMB). There would be very little net change in year-to-year receipts due to the "receipts effects" after FY 1981.

Summary of Costs

Sectors Affected: Large manufacturers of tobacco products; Federal Government; State and local governments; and consumers.

ATF calculated that the benefit loss to the large manufacturers would be \$23.710 million. In economic terms, this loss would be real and would be reflected in higher operating costs to the large manufacturers of tobacco products (approximately 12 of 147).

There would also be a direct loss of income tax to the Federal, State, and local governments, because higher

operating costs would reduce taxable income. (The interest costs to the large manufacturer are a deductible expense and would reduce the net income before taxes on the income statement and tax returns of the large manufacturer.) For example, at a nominal corporate income tax rate of 46 percent at the Federal level, the direct loss of Federal income tax revenue would be \$10.906 million. State and local governments would experience similar direct income tax revenue losses.

Consumers may pay higher prices due to an increase in operation costs to the large manufacturers. The price increase would not be significant and would be an estimated average of 0.04 cents per package of cigarettes. Also, the effect of any price rise on the Consumer Price Index would not be significant.

One-time administrative costs to ATF is \$4,500; the cost to the Internal Revenue Service is presently unknown.

Related Regulations and Actions

Internal: ATF is considering regulations that would require the large manufacturers to transmit their tobacco excise tax payments via electronic fund transfer. This proposed rule appeared in the *Federal Register* (45 FR 38258, June 6, 1980; 45 FR 52407, August 7, 1980). See also the *Calendar* entry "Delivery of Certain Alcohol and Tobacco Products Excise Tax Payments via Electronic Fund Transfer."

External: None.

Active Government Collaboration

ATF and the Internal Revenue Service are reviewing their procedures to identify any administrative problems that could result and to develop additional procedures to correct those problems.

Timetable

Final Rule—Undetermined at present.
Public Hearing—To be determined.
Final Rule Effective—30 days after publication in the *Federal Register*.
Final Regulatory Analysis—Undetermined at present.

Available Documents

NPRM—45 FR 38271, June 6, 1980.
Extension of Comment Period
Notice—45 FR 52407, August 7, 1980.
Draft Regulatory Analysis (Cost Effectiveness) on Notice No. 342.
Comments received during comment period (June 6 through September 8, 1980).

The above documents are available for review during normal business hours in the ATF Reading Room, Office of Public Affairs and Disclosure, Bureau of Alcohol, Tobacco, and Firearms, Room

4407, 12th Street and Pennsylvania Avenue, N.W., Washington, DC 20226.

ATF "Draft Regulatory (Cost Effectiveness) Analysis on Proposed Rule (Notice No. 342): Proposed Return and Deferral Periods for Certain Tobacco Products Excise Tax Payments," 1980. Available free from the Regulations and Procedures Division, Bureau of Alcohol, Tobacco, and Firearms, Post Office Box 385, Washington, DC 20044.

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TREAS-ATF

Delivery of Certain Alcohol and Tobacco Products Excise Tax Payments via Electronic Fund Transfer (27 CFR Parts 19, 70*, 240*, 245*, 250, 270*, and 275*)

Legal Authority

Internal Revenue Code of 1954 (26 U.S.C. § 5061(a); 26 U.S.C. §§ 5703 (b) and (c); 26 U.S.C. § 6302(a); 26 U.S.C. § 7805.)

Reason for Including This Entry

The Department of the Treasury has proposed regulations to require alcohol and tobacco products taxpayers to transmit their excise tax payments to the U.S. Treasury by use of electronic fund transfer (EFT). The Treasury estimated that the use of electronic fund transfer would decrease the Federal Government's deficit by about \$280 million in FY 1981 and by about \$8 million yearly in subsequent years.

Statement of Problem

During 1978, the President's Reorganization Project (PRP) Team recommended to the Department of the Treasury a cash management improvement project within the Bureau of Alcohol, Tobacco, and Firearms (ATF) that would result in savings through reduced interest payments for the U.S. Treasury. In effect, ATF would collect excise tax payments on alcohol and tobacco products from approximately 150 large revenue-producing taxpayers (individual plants) via electronic fund transfer.

The proposed rule would require each alcohol and tobacco products taxpayer whose annual payment of excise tax is

\$5 million or more to make the tax payment electronically into the Federal Reserve System. By having access to the Federal Reserve Bank and a nationwide banking network, the Federal Government can receive payments originating from any commercial bank within a matter of minutes via electronic fund transfers. This system would virtually eliminate checks and also would eliminate the time customarily required for clearing a check. Ideally, usable funds would be received on the actual date of payment; and the Federal Government would pay zero interest.

Agreeing with this recommendation, the Department of the Treasury determined that ATF's present system of collecting these excise taxes would have to be modified. Under the present system of collecting alcohol and tobacco products excise taxes, the taxpayer generally prepares and mails a tax return twice a month, accompanied by a check or money order, to the district director of the Internal Revenue Service (IRS). The district director deposits the taxpayer's check or money order in a local bank designated to accept deposits to the account of the U.S. Treasury and mails the tax return and confirmed certificate of deposit to the IRS Service Center.

Under the proposed system, an alcohol and tobacco products taxpayer would send his/her payment by electronic fund transfer on the due date directly to the Treasury's account. Under this system, funds would be available to the Treasury's account on the actual due date of the taxes rather than be delayed several days due to mailing (or hand delivery) and due to processing of checks and money orders.

Alternatives Under Consideration

One alternative to issuing final regulations would be the status quo. ATF believes, however, that this proposed system would be the better alternative, because the Federal Government would realize significant cash flow and cost-reduction savings.

Summary of Benefits

Sectors Affected: The Federal Government.

The proposed rule would directly benefit the Federal Government. If tax payments are actually received on the due date, or as soon thereafter as possible, the Federal Government would be improving its cash flow management of revenues. Based on excise tax payments of \$6.668 billion by the large taxpayers (approximately 150 of 1,200 alcohol and tobacco products taxpayers) in FY 1977 and on a float time of 3 days for check clearing, ATF determined that

the Federal Government would receive an annual, gross direct benefit of \$12.307 million from not paying interest. The net benefit to the Federal Government, after allowing for certain direct and indirect effects, would be \$7.879 million. (Note: All financial data have changed, because revenue and interest forecasts from OMB have changed.)

The Department of the Treasury estimated that the use of electronic fund transfer to collect the alcohol excise tax would decrease the deficit of the Federal Government by \$228 million in FY 1981 and \$5 million a year thereafter, while using electronic fund transfer to collect the tobacco products excise tax would decrease the deficit by \$52 million in 1981 and \$3 million a year thereafter.

The reason for the difference between benefits in the first and subsequent years is that the receipts effect (which occurs because the accelerated excise tax payments would cause some year-end tax liabilities, which taxpayers can pay in the next year under current regulations, to be paid in the current year) represents the entire tax payment from approximately 150 large taxpayers for one full return period, while the gross direct benefit represents the interest for 3 days on yearly tax payments for these large taxpayers. The receipts effect occurs because 25 tax payments take place in the fiscal year that the electronic fund transfer system is initiated. Thereafter, there are 25 tax payments as usual.

Summary of Costs

Sectors Affected: The Federal Government; State and local governments; large producers of distilled spirits; large brewers; large winemakers; large manufacturers of tobacco products; and consumers.

We calculate that the total gross benefit loss to the approximately 150 large taxpayers resulting directly from the decreased amount of time the funds would be available to them would be \$14.404 million in FY 1979. Compared to the excise tax base of \$6.668 billion, the cost of products on which excise tax is paid by electronic fund transfer represents only a .2 percent increase in cost to consumers. Net of direct income tax savings, this cost to the large taxpayers is \$6.625 million or .099 percent.

Any earnings lost by the large taxpayers as a direct result of electronic fund transfer would be a loss of taxable income to these large taxpayers.

Whether a large taxpayer used his/her own funds to make tax payments or used borrowed funds, a loss of taxable earnings from the funds would result

from the earlier tax payment. Those foregone taxable earnings are at least equal to the opportunity cost (benefit loss) of \$14.404 million described above. At a nominal corporate income tax rate of 46 percent at the Federal level, the loss of Federal income tax revenue would be \$6.290 million, \$6.621 million discounted. We project similar direct income tax revenue losses for State and local governments.

This reduction in Federal, State, and local income tax revenue would be permanent in respect to a taxpayer who entered on and continued using electronic fund transfer. If a taxpayer would revert to a nonelectronic-fund-transfer status, there would be a related income tax revenue increase for Federal Government and State and local governments due to the resulting increase in the taxpayer's taxable earnings. The taxpayer would gain 3 days of "float" when he goes off electronic fund transfer. This 3 days of float would result in greater taxable income for the taxpayer vis a vis more income tax revenues for the Federal Government, and State and local governments.

The large taxpayers most likely will pass on any related cost increases to consumers in the form of price increases. Where demand is relatively price elastic (i.e., when 1 percent increase in price results in greater than 1 percent decline in consumption), the large taxpayers may absorb some of the cost increase.

While general demand for alcohol and tobacco products is believed to be relatively price inelastic, there may be submarkets (e.g., where distilled spirits are a major market, cordials are a submarket) in which demand sharply declines relative to a price increase. (For instance, gin might be a price elastic product and gin liqueur may be a highly priced inelastic product.) Consequently, large taxpayers competing in those submarkets might not be able to pass on their increased costs to those submarkets without suffering loss of revenue.

In practice, we expect little cost absorption by large taxpayers, because they participate in a number of submarkets. This diversification allows them to avoid absorbing cost increases by increasing prices more sharply in price inelastic submarkets than in price elastic submarkets. For example, if the large taxpayer produces both gin and gin liqueur, he is more likely to increase the cost of gin liqueur than gin.

As a result of this pricing behavior by the large taxpayers, small taxpayers (those paying less than \$5 million of excise tax) in the industry will suffer no

ill effects from electronic fund transfer in price elastic submarkets, and may gain some small price advantage in price inelastic submarkets.

The proposed rule would have significant indirect effects in Federal income tax and excise tax collections, as well as on State and local income tax, excise tax, and sales tax. Federal income tax would increase by at least \$2 million, and Federal excise tax would decline by at least \$1 million.

Related Regulations and Actions

Internal: ATF is also considering regulations that would require the large manufacturers of tobacco products to submit their excise tax payments weekly rather than twice a month. Under the proposed rule, these large taxpayers would be granted 3 business days after the proposed weekly collection period, rather than 15 days. This proposed rule appeared in the *Federal Register* (45 FR 38271, June 6, 1980; 45 FR 52407, August 7, 1980); see also entry in this *Calendar* on "Accelerated Payment of Certain Tobacco Products Excise Taxes."

External: None.

Active Government Collaboration

ATF, the Internal Revenue Service, and the Bureau of Government Financial Operations are reviewing their internal procedures to identify any administrative problems in an attempt to resolve them and to develop any new procedures.

Timetable

Final Rule—December 1980 or January 1981.

Final Rule Effective—Thirty days after publication in the *Federal Register*.

Final Regulatory Analysis—November 1980 or December 1980.

Available Documents

NPRM—45 FR 38258, June 6, 1980.

Extension of Comment Period

Notice—45 FR 52407, August 7, 1980.

Draft Regulatory Analysis (Cost Effectiveness) on Notice No. 341.

Comments received during comment period (June 6 through September 8, 1980).

The above documents are available for review during normal business hours in the ATF Reading Room, Office of Public Affairs and Disclosure, Bureau of Alcohol, Tobacco, and Firearms, Room 4407, 12th Street and Pennsylvania Avenue, N.W., Washington, DC 20226.

ATF, "Draft Regulatory (Cost Effectiveness) Analysis on Proposed Rule (Notice No. 341): Electronic Fund Transfer for Certain Alcohol and Tobacco Products Excise Tax

Payments," 1980. Available free from the Regulations and Procedures Division, Bureau of Alcohol, Tobacco, and Firearms, Post Office Box 385, Washington, DC 20044.

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TREAS-ATF

Implementation of the Distilled Spirits Tax Revision Act of 1979 (27 CFR Parts 5*, 13, 19, 170*, 173*, 186*, 194*, 195*, 196*, 197*, 200*, 201*, 211*, 212*, 213*, 231*, 240*, 250*, 251*, and 252*)

Legal Authority

Distilled Spirits Tax Revision Act of 1979 (Title VIII, Trade Agreements Act of 1979), P.L. 96-39, 93 Stat. 273.

Reason for Including This Entry

The Department of the Treasury thinks that this is important because it establishes a new tax system for proprietors of distilled spirits plants. There will also be an annual revenue loss to the Treasury in excess of \$100 million and a tax savings amounting to over \$100 million a year to importers of bottled distilled spirits.

Statement of Problem

Under the Internal Revenue Code of 1954, the Secretary of the Treasury has strict control over liquors for beverage purposes and alcohol for industrial purposes, from the beginning of the production process to the point of removal from bonded premises (the portion of the distilled spirits plant where spirits on which the tax has not been paid or determined are stored). The Secretary has maintained control through a rigid system requiring permits, on-site supervision, and restriction of industry operations to separate premises or designated areas. However, in recent years, Treasury's Bureau of Alcohol, Tobacco, and Firearms (ATF) has recognized the need for modernizing this system of control and has sought legislative amendments to make possible an all-in-bond system for taxing and controlling distilled spirits. Under the all-in-bond system, all distilled spirits operations are conducted on the bonded premises of a distilled spirits plant, and the tax is determined after processing and bottling is completed on

the basis of the proof (alcoholic content) of the finished product when removed from bond.

The Distilled Spirits Tax Revision Act of 1979 changed the tax system to eliminate disparities in taxation between domestic and imported spirits. Under this Act, the tax is based solely on the alcoholic content of the domestic or foreign distilled spirits products. The Act also gave the Secretary of the Treasury authority to discontinue assignment of Government officers at distilled spirits plants. Finally, in order to promote increased efficiency of Government and industry operations, the Act permitted many other simplifications in the regulation of the distilled spirits industry. Reduction of Government forms and increased acceptance of commercial documents in place of separate Government records, elimination of the distinction between bonded and non-bonded operations and premises, and elimination of many letterhead applications all contribute to greater simplification of operations and recordkeeping systems.

On December 11, 1979, ATF issued temporary regulations in Treasury Decision (T.D.) ATF-62 (44 FR 71613). These regulations implemented the Distilled Spirits Tax Revision Act of 1979, effective January 1, 1980.

Alternatives Under Consideration

Because these regulations were required to implement a statute, there was no practical alternative to issuing them. However, because these regulations completely changed the ways the distilled spirits industry was operated and regulated, ATF issued them in the form of a temporary rule with provision for public comment. Based on the public comments received, ATF will issue a final rule. Pertinent comments citing practical experiences of both the industry and the Government under the temporary regulations will be considered in the writing of the final rule.

Summary of Benefits

Sectors Affected: Manufacturers and importers of distilled spirits, brandy and wine spirits; bonded manufacturers of wine; and the Federal Government.

Direct benefits accruing to proprietors of distilled spirits plants include savings due to simplification of their operational methods and required recordkeeping. With respect to operations, greater flexibility on the use of premises and equipment is possible, because all operations are conducted on bonded premises. In addition, eliminating the requirement for Government officers to

supervise directly certain operations or to be present to allow proprietors access to bonded areas allows for more efficient scheduling of plant operations.

Under the new system, proprietors determine the amount of tax due to the Government after processing and bottling is completed on the basis of the proof (alcoholic content) of the bottled product when removed from bond. Under previous regulations, ATF officers determined the tax when bulk spirits were withdrawn from bonded premises to non-bonded processing and bottling facilities. By postponing the tax determination until removal of the finished products, the new system simplifies the records systems necessary for proprietors to document their tax liability.

Distilled spirits taxes are paid on the basis of semimonthly returns. Under the previous system, qualified proprietors could defer actual payment of tax for up to 30 days. The new law provided for an additional deferral period of 15 days, and this benefits proprietors of distilled spirits plants because it saves them the cost of borrowing money for this additional length of time. This increased deferral period will be phased in over 3 years.

Wineries are also directly affected by the elimination of "standard wine premises." Under previous law, winery proprietors could not manufacture and bottle nonstandard wine products on standard winery premises. The previous regulations required these nonstandard wine products to be manufactured on nonstandard wine premises. Effective January 1, 1980, the new law abolished distinction between standard and nonstandard premises and manufacturers may now both produce and bottle wines on the same bonded winery premises.

These regulations directly affect importers of bottled distilled spirits because such products are no longer taxed on a wine gallon basis when below 100 degrees proof (i.e., on the actual volume of liquid in the product when below 100 degrees proof). Under the new law and regulations, imported bottled distilled spirits are taxed on a proof gallon basis (i.e., on the actual degree of proof in the product). As a result, importers will pay a reduced amount of tax amounting to over \$100 million a year beginning in calendar year 1980.

The Government will realize manpower savings because of the elimination of on-site supervision of distilled spirits plants by ATF officers, and the more simplified methods of tax collection, records, and reporting requirements.

Summary of Costs

Sectors Affected: Manufacturers of distilled spirits, brandy and wine spirits; bonded manufacturers of wine; manufacturers of nonbeverage products; and the Department of the Treasury.

Proprietors of distilled spirits plants should generally experience some increase in costs during the year in which Government supervision is eliminated. Training employees, adopting security measures to replace those that were formerly provided by the Government, and revising internal control and recordkeeping systems will entail a one-time cost.

The wine industry and manufacturers of alcoholic flavorings used in spirits will probably feel some effects of the new distilled spirits tax system. While the regulations will provide ways for wineries and flavoring manufacturers to continue their existing relationships with distilled spirits plants, the statutory changes in the tax system may lead to changes in product mix or in the formulation of existing products which would affect their sales to the distilled spirits industry.

The Government also will bear administrative costs of implementing the new system. Specific costs include those for developing the new regulations and procedures and for providing assistance to the industry in converting to the new system. The taxation of certain distilled spirits on a proof gallon basis rather than on a wine gallon basis directly affects the Government because there will be an annual revenue loss to the Treasury amounting to over \$100 million a year beginning in calendar year 1980.

Related Regulations and Actions

Internal: The principal regulations that this statutory change affects are the following: Gauging Manual (27 CFR part 13); Distilled Spirits Plants (27 CFR Part 19); Distilled Spirits Plants (27 CFR Part 201); Wine (27 CFR Part 240); Taxpaid Wine Bottling Houses (27 CFR Part 231); Liquors and Articles from Puerto Rico and the Virgin Islands (27 CFR Part 250); Importation of Distilled Spirits, Wine and Beer (27 CFR Part 251); Exportation of Liquors (27 CFR Part 252); Gauging Manual (27 CFR Part 186); Miscellaneous Regulations Relating to Liquors (27 CFR Part 170); Distribution and Use of Denatured Alcohol and Rum (27 CFR Part 211); Distribution and Use of Tax-free Alcohol (27 CFR Part 213); Liquor Dealers (27 CFR Part 194); Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products (27 CFR Part 197); Labeling and

Advertising of Distilled Spirits (27 CFR Part 5).

We have incorporated the following regulation projects that were under development into this general revision:

Alternate Premises between Distilled Spirits Plants and Bonded Wine Cellars (27 CFR Parts 201 and 240); Formulas for Rectified Products (27 CFR Parts 170, 201, 250, and 252); Strip Stamps and Alternative Devices (NPRM published November 7, 1978 (43 FR 51808), 27 CFR Parts 194, 201, 250, 251, and 252); Export Storage Facilities at Distilled Spirits Plants (27 CFR Part 201); Samples of Distilled Spirits (27 CFR Part 201); Distilled Spirits Meters (27 CFR Part 201).

External: The statutory changes affect the regulations that the U.S. Customs Service administers (Title 19, Code of Federal Regulations).

Active Government Collaboration

Certain aspects of the regulatory changes affect procedures of the U.S. Customs Service and the Internal Revenue Service (IRS). Some distilled spirits plants currently receive imported bulk spirits under an immediate delivery procedure whereby ATF officers act as Customs officers. Elimination of assignment of ATF officers would preclude the use of this procedure in the future. ATF is coordinating its plans for withdrawal of ATF officers with the U.S. Customs Service.

The repeal of the rectification tax (an additional tax applicable to certain mixed or processed products) eliminated the need for the collection of the rectifier's occupational tax by IRS.

Timetable

Final Rule—March 1981.

Regulatory Analysis—ATF will not prepare.

Available Documents

ANPRM—Notice No. 326, 44 FR 41833, July 18, 1979.

Public comments in response to ANPRM.

NPRM—Notice No. 329, 44 FR 71612, December 11, 1979.

Public comments in response to NPRM. The comment period closed October 15, 1980.

Temporary Rule—T.D. ATF-62, 44 FR 71613, December 11, 1979.

Extension of comment period—Notice No. 347, 45 FR 54087, August 14, 1980.

Public Law 96-39, Trade Agreements Act of 1979.

Committee Reports—U.S. Senate, Committee on Finance (S. 1376); U.S. House of Representatives, Ways and Means Committee (H.R. 4537).

These documents are available for public inspection during normal business hours at the ATF Reading Room, Room 4407, Federal Building, 12th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20226.

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TREAS-ATF

Labeling and Advertising Regulations Under the Federal Alcohol Administration Act (27 CFR Parts 4*, 5*, and 7*)

Legal Authority

Federal Alcohol Administration Act, 27 U.S.C. §§ 205 (e) and (f).

Reason for Including This Entry

The Department of the Treasury believes this rule is important because it is the first major amendment of alcoholic beverage advertising regulations since the repeal of prohibition. The regulations proposed are intended to deregulate in some instances, update advertising standards, and ensure conformity between the labeling and advertising regulation subparts.

Statement of Problem

The Bureau of Alcohol, Tobacco, and Firearms (ATF) is responsible for ensuring that advertisements for alcoholic beverages contain certain information about the product and that the advertisements are not false or misleading. While the current advertising regulations have remained basically unchanged since ATF adopted them in the mid-1930s, advertising techniques and practices and consumer education and awareness have changed significantly in the past 40 years. Over the years, ATF has issued a number of rulings interpreting the regulations in light of the changing advertising practices and growing consumer awareness. In many cases, inappropriate regulations and varied interpretations of these regulations have caused confusion for both the advertiser and the consumer.

ATF reviews approximately 3,000 advertisements for alcoholic beverages each year, usually after the advertiser is ready to release the advertisement to the media. However, since review by

ATF is not mandatory, some advertisements are released without ATF review.

Furthermore, because of the confusion over certain regulations, some advertisements violate these regulations, and ATF recalls or rejects them, costing the industry and ATF money and effort. ATF does not have a monetary estimate of the costs which it and industry incur because of recalled and rejected advertisements.

From the consumer's perspective, many advertisements which conform to ATF regulations seem to be false or misleading because of consumers' changing perceptions of certain products. For instance, the term "light" used with a malt beverage traditionally referred to the color of the product. Now the term "light" has a completely different meaning to most consumers of malt beverages, that is, reduced caloric content.

For these reasons, ATF is reviewing the labeling and advertising regulations for possible updating and revision. Among the areas under review are:

- (A) the use of prominent, active athletes and the depiction of athletic events in alcoholic beverage advertisements and on labels;
 - (B) the use of subliminal advertising techniques (subliminal is the use of words and devices to send a message to an audience subconsciously);
 - (C) the use of the word "natural" on labels and in advertisements to imply that the product is natural;
 - (D) the current interpretation of false or misleading statements and advertisements;
 - (E) the use of curative or therapeutic references on labels and in advertisements;
 - (F) comparative advertisements (i.e., ads that mention a competitor's name or brand);
 - (G) an interpretation of disparagement (for instance, should statements about a competitor's product which are true but nonetheless disparaging be allowed on labels and in advertisements?);
 - (H) the use of "taste tests" in alcoholic beverage advertisements;
 - (I) the use of the term "light" on alcoholic beverages; and
 - (J) the use of the words "pure," "double distilled," and "triple distilled" on labels and in advertisements.
- If ATF fails to address these issues, the problem of false and misleading labeling and advertising statements and representations will continue.

Alternatives Under Consideration

The Federal Alcohol Administration (FAA) Act requires the Treasury Department to regulate the labeling and

advertising of alcoholic beverages. ATF received approximately 8,900 comments from the general public on the ANPRM (43 FR 54266, November 21, 1978) that announced the proposal to review existing regulations. Some of the public comments called for greater restrictions on advertising, including a total ban on alcoholic beverage advertisements. This is beyond the authority of ATF and would require legislative action. However, the Treasury Department may deregulate in certain areas, such as in taste tests, within the framework of the FAA Act, and may rely on industry self-regulation. For example, if an industry member feels that a certain advertisement by a competitor does not comply with regulations or certain statements made in the advertisement cannot be factually supported, the industry member would submit a complaint to ATF for their appropriate action.

ATF reviewed all comments received in response to the ANPRM and analyzed the alternatives. The NPRM we will publish late this year will reflect the consideration of the alternatives and comments received on the ANPRM. The alternatives were to take no action, leaving the present regulations as they are now written and not consolidating previous ATF rulings into the regulations; to place stricter regulations on industry; or to issue guidelines for industry to follow in presenting advertisements that are truthful and that will not tend to mislead the consumer, while at the same time allowing industry greater discretion in choosing their advertising matter.

By clarifying and consolidating regulations, policies, interpretations, and rulings on advertising, ATF hopes to provide a single comprehensive source of guidelines and to liberalize the regulations in certain areas (for example, if ATF allows the use of truthful comparative advertising, the consumer might gain more information about various alcoholic beverage products and be able to make a more informed selection). ATF hopes also to restrict certain advertising practices which the public finds objectionable (for example, many respondents objected to the possible use of subliminal stimuli in alcoholic beverage advertising).

ATF will uniformly apply the adopted regulations to all alcoholic beverage advertising.

Summary of Benefits

Sectors Affected: Manufacturing, wholesale and retail trade of advertised alcoholic beverages, including malt beverages, wines, and distilled spirits (liquors); the

advertising industry; consumers who view advertisements of these products; and Federal and State governments.

These regulations will benefit consumers and those listed above. Because these regulations will clarify ATF's position on advertising, they will help reduce the recall and rejection of advertisements, thus saving the industry money by reducing necessary revisions of the advertisements' content in order to comply with regulations, while protecting the industry's right to advertise its products and reinforcing the consumer's right to expect clear and truthful advertisements. In addition, the use of taste tests will promote competition among industry members, while regulations prohibiting subliminal advertising would protect the consumer against undue persuasive advertising.

Revising the regulations will not increase costs to Government. The Government will benefit, since it currently spends much effort in explaining confusing regulations and rulings.

The FAA Act affects only labeled and advertised alcoholic beverages which are entered into interstate commerce. In the case of malt beverages, the labeling and advertising regulations issued under the authority of the FAA Act apply only to the extent that the law of a particular State imposes similar requirements. In States which have adopted the FAA Act (22 States have adopted) or impose similar requirements, these State governments should also benefit from the revisions and amendments of the regulations.

Summary of Costs

Sectors Affected: Manufacturing, wholesale and retail trade of advertised alcoholic beverages, including malt beverages, wines, and distilled spirits (liquors); and the advertising industry.

We have not been able to determine specific cost estimates for this project. In general, costs to producers of alcoholic beverages and the advertising media should not increase because these regulations affect only advertising content and do not alter methods of advertising.

Related Regulations and Actions

Internal: ATF has published a Treasury Decision (T.D. ATF-66, 45 FR 40538, June 13, 1980) requiring ingredient labeling for alcoholic beverages. ATF contracted a study with Michigan State University to study the effects of alcoholic beverage advertising on the drinking habits of young people. The

University has submitted a preliminary report, which ATF did not accept. Michigan State University is in the process of revising their report. We held a meeting with the Federal Trade Commission and the National Institute of Alcohol Abuse and Alcoholism concerning the preliminary report.

External: The Federal Trade Commission (FTC) is responsible for regulating the advertisement of wine with less than 7 percent alcohol by volume and the advertisement of nonalcoholic beverages.

Active Government Collaboration

The Federal Trade Commission and ATF are collaborating on this project. ATF is soliciting comments on the proposed regulations from other Federal agencies, and State and local governments.

Timetable

NPRM—Winter 1980/81.

Public Hearings—We will hold them if warranted.

Regulatory Analysis—ATF will not prepare.

Available Documents

ANPRM—Notice No. 313, 43 FR 54266, November 21, 1978, entitled Advertising Regulations Under the Federal Alcohol Administration Act.

A notice extending the comment period—Notice No. 313, 44 FR 2603, January 12, 1979.

Copies of the documents and comments may be inspected during normal business hours at the ATF Reading Room, Room 4407, Federal Building, 12th Street and Pennsylvania Avenue, N.W., Washington, DC 20226.

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TREAS—U.S. Customs Service

Accelerated Duty Payment (19 CFR Parts 141*, 142*, and 144*)

Legal Authority

Customs Procedural Reform and Simplification Act of 1978, § 103, 19 U.S.C. §§ 66, 1484, 1505, 1557, and 1624.

Reason for Including This Entry

The Customs Service (Customs) thinks this project is important because it would alter existing policy governing the

deposit of customs duties, and could impose an increased economic burden on a segment of the importing community.

Statement of Problem

The Department of the Treasury has overall responsibility to maintain adequate cash to meet the Government's expenditure needs. One source of that revenue is the duty which Customs collects on imported merchandise. To expedite the flow of funds to the Government, Customs must maintain effective cash management practices. In this regard, the Department has determined that Customs' current practice of allowing importers a 10-day deferral period to deposit estimated duties after "entry" of imported merchandise, or immediate release of the merchandise before entry papers are filed, causes the Government unnecessary borrowing and associated interest costs. The Government's cash flow could be improved if Customs collected duties earlier than it does now.

We based this determination on a Report to the Congress by the Comptroller General entitled "Import Duties and Taxes: Improved Collection, Accounting, and Cash Management Needed," dated August 21, 1978.

According to the Report, Customs collected about \$3.9 billion in duties on entries during FY 1976. Of these duties, importers deferred payment of about \$3.3 billion in estimated duties because they used the immediate delivery procedure. The Report also stated that although the Government is entitled to payment when merchandise is released to the importer, a study indicated that importers deferred payment an average of 12.4 calendar days, ranging as high as 33 days. Using the 12.4-day delay developed in the study and interest costs of 6.5 percent per year, the Report estimated that deferrals delayed collections which, had they been deposited when the merchandise was released, could have reduced governmental interest cost by about \$7.3 million in FY 1976. It should be noted that the cost of the Government's borrowing money today is significantly greater than 6.5 percent per year.

The Customs Procedural Reform and Simplification Act of 1978 (the Act) made significant changes in the Customs laws on the entry of imported merchandise. A document amending the Customs Regulations (19 CFR Chapter I) to establish new procedures needed to reflect these changes was published as Treasury Decision (T.D.) 79-221 in the *Federal Register* on August 9, 1979 (44 FR 46794).

One of the more significant statutory changes involved amending § 505(a), Tariff Act of 1930, as amended (19 U.S.C. § 1505(a)), to permit the payment of estimated duties either at the time of making entry or at a later time, but not later than 30 days after making entry, as prescribed by regulations.

Although the amendments made by T.D. 79-221 continued the practice of requiring estimated duties to be deposited within 10 working days after the date of entry, the NPRM that preceded those amendments (43 FR 55774, November 29, 1978) advised the public that Customs was considering the possibility of requiring the deposit of estimated duties earlier than 10 working days after the date of entry.

After further review of the matter and of the current need to improve the flow of funds received as duty on imported merchandise, the Treasury Department and Customs are considering a project to reduce the 10-working-day period to a 3-working-day period for the deposit of estimated duties. We would phase in the proposed reduction, if adopted, over a 7-year period, one day each year, beginning January 1, 1981. However, we would monitor each yearly reduction closely and assess the impact on Customs and the importing community to determine if we should implement the next reduction as scheduled. We would also consider a rollback of a scheduled reduction to a longer period where circumstances warrant.

It is essential to understand that Customs must maintain the most effective cash management practices possible to expedite the flow of funds to the Government. Collecting duties earlier than is now the practice will improve the Government's cash flow and maximize the use of Customs collections in reducing unnecessary borrowing and associated interest costs. Customs believes that any hardships imposed by the project can be mitigated substantially if that segment of the importing public most likely to be affected by the change, i.e., Customs brokers (persons licensed by Customs and authorized to act as agents of importers in customs transactions), adopt more responsible cash management practices.

Alternatives Under Consideration

As stated above, Customs is currently considering the reduction of the time for deposit of estimated duties from 10 days to 3 days, spaced over a period of 7 years. However, because we have not yet published an NPRM and received public comment, we are not committed to that specific time frame.

Possible alternatives might be to reduce immediately the time period to 3 days, or to some other period greater than 3 days but less than 10 days after the time of entry, instead of spacing out the reduction. Other alternatives might be to phase in the reduction of the time period during which estimated duties must be deposited over some period less than 7 years (e.g., 3 years, 5 years).

Summary of Benefits

Sectors Affected: The Federal Government; and the general public.

If we adopt this proposal, there will be a savings to the Government, which would collect duties earlier than at present, and place them in Treasury depositories. This would spare the Government the interest expense of raising the equivalent amount of revenue by borrowing from the public. The Government would save the following amount of interest during each of the 1981-87 calendar years:

Calendar year:	Projected duty collections (in current billions of dollars)	Estimated Government bill and bond interest rate (percent)	Interest savings to the Government (in current millions of dollars)
1981	9.1	10.4	3.0
1982	10.1	10.7	7.0
1983	11.1	10.9	11.7
1984	12.0	10.3	15.9
1985	13.0	9.8	20.4
1986	14.1	9.8	26.5
1987	15.4	9.8	34.2

Summary of Costs

Sectors Affected: The Federal Government; customhouse brokerage services; and importers, especially small firms.

The Government may incur increased processing costs and a decrease in tax revenue from the importing community. The proposal might result in errors in liquidation and other bottlenecks caused by the rush to pay estimated duties in less than 10 working days. Those negative factors would necessitate increased processing costs to Customs and decreased tax revenue owing to increased tax writeoffs by the importing community, which would incur additional business expenses.

While it is likely that the proposal could lead to some additional costs to the Government, the actual amount of those costs cannot be determined adequately at this time without further study and information. The additional processing costs should be minimal if the proposal is implemented gradually,

i.e., by one day per year. In any case, it is conceivable that any additional costs incurred by the Government would lessen as experience with the new processing approach is developed.

The proposal will probably lead to increased interest-related costs of over \$3 million to the importing community in 1981. This figure is somewhat higher than the \$3 million benefit to the Government, because borrowing costs incurred by brokers will be higher than those of the Government. The brunt of the over \$3 million will be borne by brokers in the short run, and small brokers (perhaps 80 percent or more of all brokers) could be affected most of all. The increased costs ultimately would be passed on to the remainder of the importing community and then to consumers.

Brokers currently benefit from the "float" they enjoy in the duty-payment process. "Float" (in this case) refers to the procedure whereby brokers receive early duty payments from some clients, and use those to cover late duty payments on duties owed by other clients. Brokers also benefit from the deposit in interest-bearing accounts of monies received from clients until the date when the estimated duty payment is due.

Implementation of the proposal would deprive many brokers of a certain amount of interest on their float. Moreover, some brokers could be forced to resort to additional borrowing in order to pay estimated duties (or interest due) sooner. Small brokers would be at a greater disadvantage than large brokers, because small brokers generally would have more difficulty obtaining credit, and likely would incur higher borrowing fees than large brokers. Because some brokers may tend to operate on narrow margins, the effects of the proposal on those brokers could be adverse, although (as discussed below) the costs involved per broker may not be extremely significant.

There are approximately 1,000 licensed brokers in the United States, employing a total of 10,000 to 12,000 people. Some of those brokers are also freight forwarders who transport merchandise for importers, and whose brokerage activities often account for 40 percent or less of a firm's business. If a form of accelerated duty payment is adopted by Customs, this latter group of large brokers stands to lose relatively less than small brokers whose entire livelihood is based on the brokerage business alone.

The over \$3 million in interest and borrowing cost to brokers in 1981, which we estimate to occur if we adopt the proposal, translates into an \$8,000 cost

per broker if each of the 1,000 brokers shared equally in the cost. The actual cost would vary widely according to the broker's size and the duty rates on the type of merchandise handled. It could be difficult for brokers to pass on the increased costs to their clients in the short run because of contractual reasons as well as competitive reasons.

In addition to interest and borrowing losses to brokers, the proposal could increase the cost of processing for many brokers.

Importers generally will not be as adversely affected by the proposal as brokers would be (at least not in the short run). Importers, especially large importers, temporarily would be well insulated from any adverse effects, although in time much of the increased costs would be passed on to importers by brokers. However, some smaller importers who rely on brokers to finance their imports could be affected adversely in the short run.

The impact of the proposal on U.S. foreign trade probably will be negligible, despite the fact that the importing community (especially brokers) has indicated that the proposal would cause trade bottlenecks, distribution delays, and the disruption of normal trade patterns, ultimately resulting in a decrease in trade. While a decrease in trade may occur, Customs believes that the decrease would be very small, even if the importing community were to incur significant costs owing to the proposal. Even if the entire sum (proposal costs) were passed on to import costs, the total decrease in U.S. imports still would be only a negligible portion of the \$295 billion in U.S. imports projected for 1981.

In addition, even if the increased costs of the proposal incurred by the importing community were completely passed on to consumers over a period of time, it is unlikely that the effect on either consumers or the general inflation rate would be significant.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

Work Plan 80-3—Fall 1980.

Draft Regulatory Analysis—Fall 1980.

NPRM—Fall 1980.

Public Comment Period—60 days following publication of NPRM in the Federal Register.

Final Rule/Treasury Decision (T.D.)—Winter 1980.

Final Rule Effective—30 days from date of publication in the Federal

Register.**Available Documents**

NPRM—43 FR 55774, November 29, 1978.

Treasury Decision (T.D.) 79-221, 44 FR 46794, August 9, 1979.

Report to the Congress by the Comptroller General, "Import Duties and Taxes: Improved Collection, Accounting, and Cash Management Needed," dated August 21, 1978.

Copies of these documents may be reviewed at the Customs Service Headquarters, 1301 Constitution Avenue, N.W., Washington, DC 20229, Room 2426, during normal business days between 9:00 a.m. and 4:30 p.m.

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TREAS—Customs**Administrative Rulings (19 CFR Part 177*)****Legal Authority**

19 U.S.C. §§ 66 and 1624.

Reason for Including This Entry

The Customs Service (Customs) believes that the proposed amendments are necessary to expedite the issuance of tariff classification rulings in view of the increase in the number of ruling requests and a decrease in the Customs Headquarters staff. We anticipate that implementation of the proposal will reduce the time required to issue rulings in non-complex and non-sensitive cases and will provide more timely guidance to the international trade community. Because these amendments will change the procedure for making ruling requests, they are of public interest.

Statement of Problem

To be certain of the rate of duty which will be assessed upon merchandise when it is imported into the United States, importers usually request binding rulings from Customs before the import transaction relating to the merchandise takes place. Such rulings are issued by the Office of Regulations and Rulings (ORR) at Customs Headquarters. While some of the requests require immediate replies, others do not require such quick responses. In the absence of advice from the requester, ORR usually cannot determine the urgency of any particular

ruling request. Some of these requests are quite simple, do not involve significant duty, or have any other complicating factors. However, a small percentage are either very complex or have other issues involved which make the decisions sensitive.

Because of significant increases in ruling requests and decreases in staffing, it has become apparent to Customs that some method must be found to distinguish the importance of the requests and to expedite the ruling process. Although a variety of management improvements have been made in ORR, it still takes an average of 100 to 110 days to process a response to an importer. Such a processing time for non-complex and non-sensitive cases is not acceptable if Customs intends to provide the necessary guidance to the international trade community.

Customs undertook a detailed examination of the ruling process and how it might be improved. Subsequently, on July 25, 1980, we published an NPRM in the Federal Register (45 FR 49591) proposing that present procedures be modified to allow for a more active role by the National Import Specialists (NIS), a relatively small, skilled group of Customs employees, located in Customs Region II, New York, New York.

In the NPRM, we propose that authority to issue selected rulings would be invested in the Regional Commissioner of Customs, New York, under whose supervision the NIS are organized. The NIS would issue ruling letters regarding only prospective Customs transactions.

Subject to guidelines provided by Customs Headquarters, the Regional Commissioner would determine whether the requested ruling would be issued from the Region or whether, due to its complex or sensitive nature, the matter would be referred to the Director, Classification and Value Division, Customs Headquarters. Those members of the public who believed that their classification requests presented complex or important issues could make their requests directly to Headquarters.

The Director, Classification and Value Division, Customs Headquarters, would retain authority to issue rulings in all matters brought to his attention and to independently review all ruling letters issued by the Regional Commissioner. If the recipient of a ruling disagrees with the tariff classification, he could petition the Director, Classification and Value Division, Customs Headquarters, for review of the ruling.

If an actual importation of merchandise occurs after receipt of a request for a ruling but before the ruling is issued, the NIS would handle the

matter in the same way it is currently handled by Headquarters.

Rulings signed by the Regional Commissioner would be binding on Customs. If published, these rulings would create established and uniform practices. Rulings would not be withdrawn retroactively to the detriment of the party on whose behalf the ruling was requested.

This amendment to the Customs Regulations is required in order to authorize the Regional Commissioner, New York, to issue administrative rulings. If the proposal is not implemented, Customs may be hampered in its effort to expedite the issuance of rulings in non-complex and non-sensitive cases.

Alternatives Under Consideration

The NPRM published in the Federal Register invited interested persons to submit comments regarding the proposal. Because Customs is considering the numerous comments which have been received in response to the NPRM, no decision has been made regarding possible modifications to the proposal. However, the final rule will contain a detailed analysis of any changes that are adopted.

Summary of Benefits

Sectors Affected: Customs; and the international trade community.

It is anticipated that implementation of the proposal will reduce the time required to issue tariff classification rulings in non-complex and non-sensitive cases, enabling Customs to provide more timely guidance to the international trade community.

Summary of Costs

Sectors Affected: None.

The proposal will not impose substantial additional requirements or costs on the international trade community.

Related Regulations and Actions

None.

Active Government Collaboration

The proposal was prepared by Customs Headquarters personnel after consulting with Customs field officers and members of the international trade community.

Timetable

Regulatory Analysis—None.

Public Hearing—None planned.

Final Rule—Fall 1980.

Final Rule Effective—30 days from date of publication in the Federal Register.

Available Documents

Customs Study on Improving the Administration of the Ruling Process. Work Plan 80-5, June 6, 1980.
 NPRM—45 FR 49591, July 25, 1980.
 Public Comments on NPRM (public comment period closed August 27, 1980).

Copies of these documents may be reviewed at the Customs Service Headquarters, 1301 Constitution Avenue, N.W., Room 2426, Washington, DC 20229, during normal business days between 9:00 a.m. and 4:30 p.m.

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TREAS-Customs**Civil Aircraft Regulations (19 CFR Parts 6* and 10*)****Legal Authority**

Trade Agreements Act of 1979, § 601, 19 U.S.C. §§ 66 and 1624.

Reason for Including This Entry

The Customs Service (Customs) believes this rule is important because, by eliminating duty on civil aircraft and parts for civil aircraft, it implements the Civil Aircraft Agreement of the Multilateral Trade Negotiations (MTN). Further, the amendments will change the procedures for the admissibility of civil aircraft and parts for civil aircraft and therefore, it is of public interest.

Statement of Problem

Unless specifically exempted, all merchandise imported into the United States is subject to a customs duty. One of the major responsibilities of Customs is to assess and collect duties when due, and to insure that the entry requirements for merchandise are met.

In some instances, the President and the Congress determine that it would be in the national interest to reduce or eliminate duty on particular merchandise. In this regard, as part of the MTN conducted with many of the nations engaged in international trade, the United States signed the Agreement on Civil Aircraft. This Agreement, which was incorporated into U.S. law as Title VI of the Trade Agreements Act of 1979 (the Act), provides for the duty-free trade in civil aircraft and parts for civil aircraft.

To implement the statutory provisions of Title VI of the Act, Customs is proposing to amend its regulations as

they relate to (1) the importation of civil aircraft and parts for civil aircraft, and (2) foreign repairs to and foreign purchases of repair parts and materials for U.S.-registered civil aircraft. The regulations which we will develop will enable us to administer the provisions of the Agreement.

In the area of tariffs, the Agreement eliminates, as of January 1, 1980, duties on the following:

- (a) all civil aircraft;
- (b) all civil aircraft engines and their parts and components;
- (c) all other parts, components, and subassemblies of civil aircraft; and
- (d) all ground-flight simulators (machines used for training on the ground which duplicate flight conditions) and their parts and components, whether used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of civil aircraft.

"Civil aircraft" are defined in Title VI of the Act to mean all aircraft other than those purchased for use by the Department of Defense and the Coast Guard.

Under the Act, parts, components, and subassemblies of civil aircraft qualify for duty-free entry if they (1) are for use in civil aircraft, and (2) are classified for Customs purposes under one of the specific Tariff Schedules of the United States (19 U.S.C. § 1202) headings listed in Title VI of the Act.

To be admitted free of duty, parts, components, and subassemblies must be "Certified for Use in Civil Aircraft" by the Federal Aviation Administration (FAA) or an FAA-recognized airworthiness authority in the country of exportation.

In addition, duties on foreign repairs to and foreign purchases of repair parts and materials for U.S.-registered civil aircraft, previously assessed under § 466, Tariff Act of 1930, as amended (19 U.S.C. § 1466), and §§ 6.7 (d) and (e), Customs Regulations (19 CFR 6.7 (d) and (e)), are eliminated.

Alternatives Under Consideration

Customs cannot consider alternatives to the proposal because it must implement the provisions of the Agreement and the Act providing for the duty-free entry of civil aircraft and aircraft parts. However, certain enforcement and administrative methods are being considered as a result of public comments on the NPRM.

Summary of Benefits

Sectors Affected: Domestic and foreign manufacturing, repair services, wholesale trade (particularly

importing), and retail trade of civil aircraft and parts for civil aircraft; the general public; and purchasers of civil aircraft and parts for civil aircraft.

This Agreement and implementing regulations will indirectly benefit all nations with a civil aircraft industry, whether it be a civil aircraft manufacturer, air carrier, or civil aircraft maintenance industry, by providing for the free flow between countries that are signatories to the Agreement on civil aircraft and parts for civil aircraft.

Foreign repairs to, and foreign purchase of, repair parts and materials for U.S.-registered civil aircraft which were previously dutiable, are duty free under the Act and Customs' proposed implementing regulations. This will eliminate a trade barrier to foreign repairs to and foreign purchases of repair parts and materials for U.S.-registered civil aircraft. Elimination of the duty will also benefit purchasers of foreign civil aircraft and purchasers of spare or replacement parts for those aircraft through a reduction in the purchase price because of elimination of duties.

Summary of Costs

Sectors Affected: None.

These regulations do not require a Regulatory Analysis under the criteria established by E.O. 12044 (43 FR 12861) and the implementing Treasury Directive (43 FR 52120). Accordingly, no analysis of costs has been made by Customs. An analysis of the budgetary impact is contained in the Senate report on the Act (Senate Report No. 96-249). Customs believes the costs of implementation of the provisions would be negligible, since significant additional requirements for the entry of the items covered by the Act have not and will not be established.

Related Regulations and Actions

Internal: Customs has appointed an MTN Coordinator to oversee implementation of the Act, including the proposed regulations relating to civil aircraft. We have held meetings at the Customs Service headquarters with representatives of the aircraft industry and others who were involved in the MTN negotiations on this Agreement.

External: None.

Active Government Collaboration

The proposal has been coordinated with representatives of the Office of the Special Trade Representative; the Departments of State, Labor, Commerce, and Treasury; the International Trade Commission; and the Federal Aviation Administration.

Timetable

Regulatory Analysis—None.
Public Hearing—None.
Final Rule—Winter 1980.
Final Rule Effective—30 days from date of publication in the Federal Register.

Available Documents

Work Plan 79-30.
NPRM—45 FR 1633, January 8, 1980.
Public Comments on NPRM. (Public comment period closed March 10, 1980.)
Copies of these documents may be reviewed at the Customs Service Headquarters, 1301 Constitution Avenue, N.W., Washington, DC 20229, Room 2426, during normal business days between 9:00 a.m. and 4:30 p.m.

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TREAS—Customs**Importation of Motor Vehicles and Motor Vehicle Engines Under the Clean Air Act (19 CFR 12.73)****Legal Authority**

Clean Air Act Amendments of 1970, 42 U.S.C. § 7521 *et seq.*; 19 U.S.C. §§ 66 and 1624; 42 U.S.C. §§ 7521, 7522, and 7601.

Reason for Including This Entry

The Customs Service (Customs) thinks this proposal is important because it would improve our administrative and enforcement efficiency and the effectiveness of regulations relating to the importation of motor vehicles and motor vehicle engines under the Clean Air Act. The proposal also would be a matter of great public interest because it provides a precedent-setting exemption to an individual who wishes to import a vehicle or engine for personal use.

Statement of Problem

Under §§ 202 and 203 of the Clean Air Act, as amended (42 U.S.C. §§ 7521 and 7522) (the Act), the Department of Health and Human Services (formerly the Department of Health, Education, and Welfare) and the Environmental Protection Agency (EPA) have promulgated regulations in 40 CFR Parts 85 and 86 which establish standards for the control of emissions from certain vehicles and engines. The Act prohibits importation into the United States of a vehicle or engine manufactured after the

effective date of an emission control standard applicable to the vehicle or engine (or which would have been applicable had the vehicle been manufactured for importation into the United States). However, this prohibition does not apply if the vehicle or engine is covered by a certificate of conformity with applicable standards or if it is exempted by the EPA Administrator.

In conjunction with EPA, Customs enforces those laws and regulations applicable to emission controls for imported vehicles and engines. Regulations relating to those importations are found in § 12.73, Customs Regulations (19 CFR 12.73), and in the EPA regulations at 40 CFR Part 85, Subpart P. EPA is proposing several major changes in its regulations, published in the Federal Register on July 21, 1980 (45 FR 48812). If adopted, the revision to the EPA regulations would require corresponding changes to § 12.73, Customs Regulations.

If a vehicle or engine now fails to comply with emission standards, an importer may post a bond with Customs and bring the vehicle or engine into conformity within 90 days of entry. This procedure has misled some importers into believing that modification is an easy option. Likewise, although an importer may post a bond and enter a vehicle or engine to attempt to demonstrate that it conforms by subjecting it to the full Federal test procedure, in some cases this is expensive and impracticable.

Administration and enforcement of present procedures place a substantial burden on Customs and EPA. To alleviate this burden, Customs published in the Federal Register on July 21, 1980 (45 FR 48817) an NPRM which would eliminate the provisions currently found in § 12.73(c), Customs Regulations, which allow conditional importation of a vehicle or engine under bond. Further, because of potential hardships, the proposed regulations would provide an exemption to an individual who has not imported or attempted to import a nonconforming vehicle or engine since December 31, 1970, the effective date of the Clean Air Act Amendments of 1970, and who wishes to import a vehicle or engine for personal use and not for resale. The individual could use this exemption only once.

The Customs proposal provides very limited exemptions for national security and repairs or alterations to vehicles or engines and strengthens and clarifies the exemption in § 12.73 and other exclusions.

Alternatives Under Consideration

Because Customs, in conjunction with EPA, enforces those laws and regulations applicable to emission controls for imported vehicles and engines, the proposed Customs regulations to a large degree are predicated upon the alternatives proposed by EPA.

Alternative (A) would be to maintain the *status quo*. However, because the present regulations appear to have misled some importers resulting in great expense and inconvenience to them, and are burdensome to Customs and EPA, we believe that this alternative is not satisfactory.

Alternative (B) would be to eliminate the current provisions which allow conditional importation of a vehicle or engine under bond, pending modification to make the vehicle or engine identical in construction to a vehicle or engine covered by a certificate of conformity, or testing to demonstrate that the vehicle or engine conforms with Federal emission standards. However, adoption of this alternative could cause a hardship to individuals who import nonconforming personal use vehicles for the first time. Without the modification and testing options, an individual attempting to import a vehicle or engine not covered by a certificate of conformity would have to export or destroy the vehicle.

Alternative (C), which we favor and have set forth in the NPRM, would be to adopt Alternative (B) above, but promulgate regulations providing a qualified exemption for an individual who imports a nonconforming vehicle or engine for his or her own personal use and not for resale. The exemption would apply only to an individual who has not imported or attempted to import a nonconforming vehicle or engine since the effective date of the Clean Air Act Amendments of 1970 (December 31, 1970). Therefore, an individual could use the exemption only one time at most to import one vehicle or engine not covered by a certificate of conformity.

Summary of Benefits

Sectors Affected: Individuals importing nonconforming vehicles or engines for their own personal use and not for resale; nonresident and resident owners of fleet vehicles (such as corporate owners of taxicabs or buses) importing those vehicles or engines for repairs or alterations; Customs; and EPA.

Under current regulations, if a vehicle or engine fails to comply with emission standards, an importer may post a bond with Customs and bring the vehicle or

engine into conformity within 90 days of entry. This procedure and related regulations have imposed a substantial administrative and enforcement burden on Customs and EPA. Similarly, it has proved misleading, expensive, and impracticable for importers to modify or test nonconforming vehicles or engines. Adoption of Alternative (C) would allow an individual, under specified conditions, to import a nonconforming vehicle or engine only once and for personal use and not for resale.

A savings in expenses to the Government and individuals would be realized. Individuals eligible to use the exemption to import a nonconforming vehicle or engine for personal use would be saved the expense of bringing the vehicle or engine into conformity or having to export or destroy it. Similarly, the Government would be able to reduce its expenses associated with administering and enforcing the present procedures related to conditional importations under bond.

The current regulations do not allow residents or nonresidents to import vehicles or engines for the purpose of repairs or alterations. Under the proposed regulations, owners of fleet vehicles would be allowed to import those vehicles or engines for repairs or alterations.

Summary of Costs

Sectors Affected: None.

Adoption of the proposed regulations would not result in any increased costs to any sectors.

Related Regulations and Actions

Internal: None.

External: The regulations of EPA applicable to emission control for imported vehicles and engines are found in 40 CFR Part 85, Subpart P.

In conjunction with Customs, EPA published its NPRM on July 21, 1980, in the *Federal Register* (45 FR 48812). On September 22, 1980, EPA published a document in the *Federal Register* (45 FR 62851) extending the time for public comment to December 3, 1980, and announcing that a public hearing would be held at EPA headquarters on November 3, 1980.

Active Government Collaboration

Customs-proposed regulations were coordinated with and reviewed by the Environmental Protection Agency, which would review in a similar manner any final rule adopted by Customs.

Timetable

Regulatory Analysis—None.
Public Comment Period—Ends
December 3, 1980.

Final Rule—Spring 1981.

Final Rule Effective—30 days from date of publication in the *Federal Register*.

Available Documents

Clean Air Act Amendments of 1970 (P.L. 91-604).

Customs NPRM—45 FR 48817, July 21, 1980.

Comments to NPRM.

EPA NPRM—45 FR 48812, July 21, 1980.

Copies of these documents may be reviewed at Customs Service Headquarters, 1301 Constitution Avenue, N.W., Washington, DC 20229, Room 2426, during normal business days between 9:00 a.m. and 4:30 p.m.

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TREAS—Customs

Interest Charges on Delinquent Accounts (19 CFR Parts 24* and 113*)

Legal Authority

19 U.S.C. §§ 66, 580, 1623, and 1624.

Reason for Including This Entry

The Customs Service (Customs) believes this project is important because it would provide an incentive for importers to pay accounts due to Customs promptly and, if accounts are not paid on time, provide for reimbursement of interest costs resulting from unnecessary Government borrowing resulting in possibly millions of dollars in savings to the Government. Because of the possible savings involved, Customs believes this matter is of great public interest.

Statement of Problem

The Department of the Treasury (Treasury) has overall responsibility to maintain adequate cash to meet the Government's expenditure needs. One source of that revenue is the duty and other charges that Customs collects on imported merchandise. If importers or other persons who owe the Government money do not pay these amounts on time, Treasury must borrow funds to meet the Government's expenditure needs.

In a major effort toward improving cash management practices, Treasury in 1979 issued requirements prescribing cash management-related procedures, including interest charges on overdue

receivable accounts. Specifically, Part 6, Chapter 8020.20, Treasury Fiscal Requirements Manual (TFRM), requires payment of amounts owed the Government on time and assessment of a late charge on overdue accounts calculated at a percentage rate based on the current value of funds to the Treasury. The percentage rate will be calculated by Treasury as an average of the current value of funds to the Treasury for a recent 3-month period; and will be transmitted in TFRM bulletins before the first day of each calendar quarter.

Section 580 of Title 19, United States Code (19 U.S.C. § 580), provides for collection of interest upon all bonds, on which suits are brought for the recovery of duties at the rate of 6 percent a year, from the time when the bonds became due. The TFRM provides that interest will be charged at an annual rate of 9 percent on all contracts, agreements, or other formal arrangements. Thus, the TFRM requirements would be applicable in all cases except those covered by 19 U.S.C. § 580.

In a report from the Comptroller General to the Congress dated August 21, 1978, the General Accounting Office (GAO) recommended that Customs charge interest on all duty accounts 30 days past due. GAO made this recommendation as part of an effort to maximize the Government's use of Customs collections to decrease its own borrowing. That report states that in the Customs Regions of Boston, Chicago, Los Angeles, and New York, accounts receivable for duties averaged \$8.5 million each month from April 1976 to March 1977 and that approximately 38 percent of that amount was more than 90 days past due.

The present Customs accounts collection policy is to (1) issue a bill which is due and payable upon receipt, (2) pursue collection in accordance with the Federal Claims Collection Act (31 U.S.C. §§ 951, 952, and 953) if payment is not received by Customs within 30 days, and (3) if a surety (guarantor) is also liable by virtue of a bond (contract), to make a formal demand on the surety for payment if the bill remains unpaid after 60 days. Currently, there is no provision for collection of an amount exceeding the principal amount, regardless of the time period of delay or additional administrative costs to the Government incurred as a result of special collection efforts.

This project would amend Parts 24 and 113, Customs Regulations (19 CFR Parts 24 and 113), to establish interest charges for the late payments of supplemental duty bills (bills for additional duties found due after

payment of estimated duties and release of merchandise); reimbursable services; and miscellaneous bills issued by Customs to organizations outside the Government, including sureties upon which a formal demand for payment has been issued and that have not paid the amount within 60 days of the issuance of the formal demand.

The proposal bases the interest rate on the current value of funds to the Treasury and calculates the rates as prescribed by the TFRM, as discussed above.

Alternatives Under Consideration

Customs is proposing amending its regulations to conform to Treasury cash management policies. Accordingly, other than giving the importing community sufficient time to adjust their procedures, alternative approaches are not applicable.

Summary of Benefits

Sectors Affected: The Federal Government; the importing community; and the surety insurance industry.

If this proposal is adopted, it will provide substantial benefits to the Government (1) through the avoidance of unnecessary borrowing by the Treasury, and (2) by providing an incentive for prompt payment of accounts which will reduce delays in collection or, alternatively, provide compensation to the Government for revenue collection delays on overdue accounts.

Customs is preparing a Regulatory Analysis which will detail the monetary benefits and other impacts from this proposal on the Federal Government, importing community, and surety insurance industry. Until the Regulatory Analysis is completed, it is not possible to estimate with any degree of certainty the impact of the proposal on the sectors affected.

Summary of Costs

Sectors Affected: The Federal Government; the importing community; and the surety insurance industry.

We believe any costs incurred would be negligible. However, as discussed above, the Regulatory Analysis will detail the impact of the proposal and summarize the costs.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

NPRM—Fall 1980.

Draft Regulatory Analysis—Fall 1980.

Public Comment Period—60 days following publication of NPRM in the Federal Register.

Public Hearing—None.

Final Rule/Treasury Decision (T.D.)—Winter 1980.

Final Rule Effective—30 days from date of publication in the Federal Register.

Available Documents

Work Plan 80-2.

Part 6, Chapter 8020.20, "Treasury Fiscal Requirements Manual." Report from the Comptroller General to the Congress, dated August 21, 1978.

These documents are available at Customs Service Headquarters, 1301 Constitution Avenue, N.W., Room 2426, Washington, DC, during normal business days from 9:00 a.m. to 4:30 p.m.

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TREAS—Customs

Valuation of Imported Merchandise for Customs Purposes (19 CFR Part 152)

Legal Authority

Trade Agreements Act of 1979, 19 U.S.C. §§ 66 and 1624.

Reason for Including This Entry

The Customs Service (Customs) thinks this proposal is important because it changes the methods used for determining the customs value of all merchandise imported into the United States.

Statement of Problem

The purpose of customs valuation is to establish the value of imported merchandise in order for Customs and foreign customs services to assess duties levied on an ad valorem (percentage of value) basis. Such values are also used, with appropriate adjustment, for reporting the value of imports. The method of valuation which a country applies can be as important as the tariff rate itself in determining the actual amount of duty charged. The customs valuation can be used to impede or promote importation of merchandise.

The Tokyo Round of the Multilateral Trade Negotiations (MTN) was the seventh round of negotiations held under the General Agreement on Tariffs and Trade (GATT) since 1948. The six previous rounds were concerned primarily with tariff reductions.

Many countries have criticized the U.S. customs valuation system, which has nine different methods of determining value, as being a major U.S. nontariff barrier to trade. Therefore, a principal objective of these countries in the Tokyo Round was to obtain changes in the U.S. customs valuation system.

The customs valuation systems of several of the countries engaged in trade with the United States also have controversial and protective features. A major objective of the United States in the negotiations was the elimination of the arbitrary and protective features from foreign customs valuation systems.

It was against this background that a new set of international rules was developed in the Tokyo Round to eliminate or reduce these features from customs valuation as nontariff barriers to trade.

The Trade Agreements Act of 1979 incorporates into U.S. law the trade agreements negotiated by the United States in the Tokyo Round and transmitted to the Congress by the President on June 19, 1979.

Title II of the Act, "Customs Valuation," implements the Agreement on Implementation of Article VII of the GATT relating to customs valuation. Title II makes significant changes in the laws administered by Customs relating to the valuation of all imported merchandise. Therefore, it is necessary to amend the Customs Regulations (19 CFR Chapter I) to implement and administer the provisions of Title II.

The Act repeals § 402a, Tariff Act of 1930, as amended (19 U.S.C. § 1402), and amends § 402 of the Tariff Act (19 U.S.C. § 1401a) to establish a new and different concept of valuation comprised of a primary and four secondary methods. These five methods are arranged in hierarchical fashion, in order of precedence for use: transaction value, transaction value of identical merchandise, transaction value of similar merchandise, deductive value, and computed value. If none of the five bases can be used, then Customs will determine a value derived from one of these bases, reasonably adjusted.

A general explanation of these terms follows. Transaction value is the price actually paid or payable for the imported merchandise when sold for exportation to the United States. Transaction value of identical merchandise is the previously accepted

transaction value of imported merchandise identical to that being appraised, sold for export to the United States, and exported at or about the same time as the merchandise being appraised. Transaction value of similar merchandise is the previously accepted transaction value of imported merchandise similar to that being appraised, sold for export to the United States, and exported at or about the same time as the merchandise being appraised.

Deductive value is the resale price in the United States of the imported merchandise, with deductions for certain items. These items are commissions or profit and general expenses, transportation, and insurance costs; customs duties and other Federal taxes; and, if appropriate, the value of further processing.

Computed value is the sum of (a) materials, fabrication, and other processing used in producing the imported merchandise; (b) profit and general expenses; (c) any assist, if not included in (a) and (b); and (d) packing costs.

Customs must amend Part 152, Customs Regulations (19 CFR Part 152), to reflect the new methods of value established by the Act. We will place the proposed regulations in a new subpart to existing Part 152.

In this regard, Customs published an NPRM in the *Federal Register* on March 31, 1980 (45 FR 20912).

Alternatives Under Consideration

Because Customs must propose regulations to implement those provisions of the Act which change the bases for determining the valuation of all merchandise imported into the United States, there are no alternatives.

Summary of Benefits

Sectors Affected: U.S. Import and export trade; customhouse brokerage services; the general public; and Customs.

The proposed regulations provide guidelines, definitions, interpretations, and examples to enable all sectors of the importing community to understand and use the new valuation law. All importers and customhouse brokers will be affected by the proposed regulations to some degree regardless of whether they import for business or personal use. The degree to which they are affected will vary according to the merchandise imported.

The Statement of Administrative Action, approved as part of the legislative history to the Act, indicates that the Agreement on Implementation of Article VII of the GATT serves the

interests of the United States commerce in the following ways:

1. Provides an agreed interpretation of current GATT rules on customs valuation. This should result in greater international uniformity in customs valuation practices and reduce the potential for dispute.

2. Bases customs values, to the greatest extent possible, on transaction values. This should lead to greater predictability and certainty in the determination of customs values both in the United States and abroad, thus benefiting both U.S. importers and exporters.

3. Eliminates the protective features of current foreign customs valuation systems, including arbitrary valuation methods and fictitious values. This should serve to make the customs valuation process abroad trade neutral; that is, the level of protection in foreign markets facing U.S. exports will not be provided by the valuation process but will be confined to the tariff rate.

4. Places increased obligations on foreign customs services regarding the transparency and propriety of their actions in customs valuation matters, thereby safeguarding U.S. exporters from abuse.

5. Increases the opportunities for U.S. exporters to appeal improper customs valuation decisions both at the national and international levels.

6. Simplifies the current U.S. valuation system without reducing the protection of U.S. industries afforded by certain features of the current U.S. system.

7. Increases the ease of administration of U.S. valuation laws and clarifies certain controversial areas of those laws. This should result in streamlined customs valuation procedures, in reduced administrative costs, and in fewer disagreements between U.S. importers and Customs.

Summary of Costs

Sectors Affected: None.

The Statement of Administrative Action states that adoption of a transaction value-based system of customs valuation, as provided in the Agreement, will not have a significant overall impact on the amount of customs duties collected in the United States. Products for which there might have been significant impact, such as those currently subject to the American Selling Price method of customs valuation, will have new tariff rates apply to them to ensure that U.S. industries producing those products receive protection substantially equivalent to what they currently receive from present rates of duty

applied on customs values determined under present U.S. law.

The legislative history of the Act also states that the paperwork and recordkeeping requirements the regulations may impose are not anticipated to be different in any significant or substantial way from those under existing law.

The legislative history further states that there would be no new budget authority or any new or increased tax expenditures or new budget authority providing financial assistance to State and local governments.

Related Regulations and Actions

Internal: Customs has appointed an MTN Coordinator to oversee implementation of the Act, including the proposed regulations relating to Customs valuation. Customs has held meetings with representatives of the importing community throughout the United States to explain the new methods of determining value for customs purposes. In addition, we have prepared a pamphlet, "Customs Valuation," and distributed it throughout the importing community.

External: None.

Active Government Collaboration

The proposed regulations were coordinated with and reviewed by an interagency task force made up of representatives of the Office of the Special Trade Representative; the Departments of State, Commerce, and Treasury; and the International Trade Commission.

Timetable

Regulatory Analysis—None.

Public Hearing—None planned.

Final Rule—Winter 1980.

Final Rule Effective—On date of publication of the Treasury Decision in the *Federal Register*.

Available Documents

Trade Agreements Act of 1979, P.L. 96-39, 93 Stat. 144.

Trade Agreements Act of 1979, Statement of Administrative Action House Document No. 96-153, Part II (96th Congress, 1st Session).

House Report on H.R. 4537, House Report No. 96-317 (96th Congress, 1st Session).

Senate Report on H.R. 4537, Senate Report No. 96-249 (96th Congress, 1st Session).

NPRM—45 FR 20912, March 31, 1980. Public comments on NPRM. (Public comment period closed May 30, 1980.)

Customs Valuation, March 1980.

Copies of these documents may be reviewed at the Customs Service

Headquarters, 1301 Constitution Avenue, N.W., Washington, DC 20229, Room 2426, during normal business days between 9:00 a.m. and 4:30 p.m.

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GENERAL SERVICES ADMINISTRATION

Federal Property Resources Service

National Defense Stockpile Acquisition Regulations (41 CFR Part 5C)

Legal Authority

Strategic and Critical Materials
Stockpiling Act, 50 U.S.C. § 98 *et seq.*

Reason for Including This Entry

The General Services Administration (GSA) includes this regulation because of interest to industries concerned with commodities maintained in the national defense stockpile and because the Government is a significant buyer of these commodities.

Statement of Problem

Under the Strategic and Critical Materials Stockpiling Act, the Federal Property Resources Service (FPRS) is responsible for the acquisition and disposal of materials for the National Defense Stockpile.

The stockpile contains a supply of 93 commodities such as tungsten, tin, and industrial diamonds, which would have strategic or critical importance in the event of war or other national emergency. The stockpile has a current market value of \$14 billion, and FPRS plans more than 100 acquisition transactions each year with a total value of as much as \$500 million. Section 6(b) of the Act provides that "acquisition of strategic and critical materials under this Act shall be in accordance with established Federal procurement practices." At this time there is no regulation which describes the practices and procedures which FPRS uses in making acquisitions for the stockpile. The proposed regulation is intended to describe FPRS practices in a publicly available form. These practices often reflect both commercial procedures which are unique to certain commodities, and the consideration FPRS gives to avoiding market disruption and preventing avoidable loss to the Government.

Alternatives Under Consideration

We have considered issuing no regulation, amending other procurement regulations to cover stockpile acquisitions, and issuing a separate regulation. If we do not issue a regulation, the public will not have a formal description of our practices and procedures for stockpile acquisitions. Amendment of other procurement regulations would introduce into them a large body of information which pertains only to stockpile transactions. For this reason, we believe that a separate regulation is preferable and can better describe FPRS practices in acquiring stockpile commodities.

Summary of Benefits

Sectors Affected: Domestic and foreign industries which supply, trade, and use the basic industrial raw materials of the economy of the United States; and users of these raw materials.

The proposed regulation will increase public knowledge of FPRS's stockpile acquisition practices. This knowledge should help other buyers, traders, and users of affected commodities to deal with FPRS and plan their transactions.

Summary of Costs

Sectors Affected: None.

The proposed regulation does not impose direct or indirect costs on the Government or any sector of the economy because it will not require changes in existing practices.

Related Regulations and Actions

None.

Active Government Collaboration

The Federal Emergency Management Agency coordinates National Defense Stockpile program activity, developing stockpile goals and setting overall annual disposal and acquisition plans in coordination with the Departments of Defense, Interior, State, Commerce, and Treasury; the Central Intelligence Agency; GSA; and the Office of Management and Budget. GSA has sole control over actual stockpile transactions.

Timetable

NPRM—None.
Public Hearing—None.
Public Comment Period—None.
Final Rule—Late 1980.
Regulatory Analysis—Not required.

Available Documents

None.

Agency Contact

Anne Eckstone, Administrative

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GSA-FPRS

National Defense Stockpile Disposal Regulations (41 CFR Part 101-14)

Legal Authority

Strategic and Critical Materials
Stockpiling Act, 50 U.S.C. § 98 *et seq.*

Reason for Including This Entry

The General Services Administration (GSA) includes this regulation because it is of interest to industries concerned with commodities maintained in the national defense stockpile and because the Government is a significant buyer of these commodities.

Statement of Problem

Under the Strategic and Critical Materials Stockpiling Act, the Federal Property Resources Service (FPRS) is responsible for the acquisition and disposal of materials for the National Defense Stockpile.

The stockpile contains a supply of 93 commodities such as tungsten, tin, and industrial diamonds, which would have strategic or critical importance in the event of war or other national emergency. The stockpile has a current market value of \$14 billion, and FPRS plans more than 100 disposal transactions each year with a total value of as much as \$500 million.

Section 6(b) of the Act provides that "disposal of materials from the stockpile shall be made by formal advertising or competitive negotiation procedures." The purpose of advertising a sale, when appropriate, and of competitive negotiations, is to involve the largest practical number of bidders, and thereby to obtain the most favorable offer. At this time there is no regulation which describes the practices and procedures which FPRS uses in disposing of materials from the stockpile. The proposed regulation is intended to describe FPRS's practices in a publicly available form. These practices often reflect both commercial procedures which are unique to certain commodities and the consideration FPRS gives to avoiding market disruption and preventing avoidable loss to the Government.

Alternatives Under Consideration

We have considered issuing no regulation, amending other disposal regulations to cover stockpile disposals,

and issuing a separate regulation. If we do not issue a regulation, the public will be left without a formal description of our practices and procedures for disposal of stockpile materials. Amendment of other disposal regulations would introduce into them a large body of information which pertains only to stockpile transactions. For this reason, we believe that a separate regulation is preferable and can better describe FPRS practices in disposing of stockpile commodities.

Summary of Benefits

Sectors Affected: Domestic and foreign industries which supply, trade, and use the basic industrial raw materials of the economy of the United States; and users of these raw materials.

The proposed regulation will increase public knowledge of FPRS stockpile disposal practices. This knowledge should help other buyers, traders, and users of affected commodities to deal with FPRS and plan their transactions.

Summary of Costs

Sectors Affected: None.

The proposed regulation does not impose direct or indirect costs on the Government or any sector of the economy because it will not require changes in existing practices.

Related Regulations and Actions

None.

Active Government Collaboration

The Federal Emergency Management Agency coordinates National Defense Stockpile program activity, developing stockpile goals and setting overall annual disposal and acquisition plans in coordination with the Departments of Defense, Interior, State, Commerce, and Treasury; the Central Intelligence Agency; GSA; and the Office of Management and Budget. GSA has sole control over actual stockpile transactions.

Timetable

NPRM—None.

Public Hearing—None.

Public Comment Period—None.

Final Rule—Late 1980.

Regulatory Analysis—Not required.

Available Documents

None.

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FEDERAL ELECTION COMMISSION

Nonpartisan Communications by Corporations or Labor Organizations (11 CFR 110.4)

Legal Authority

Federal Election Campaign Act, 2 U.S.C. §§ 438(a)(8) and 441b.

Reason for Including This Entry

* The Federal Election Commission (FEC) includes this proposed rulemaking because it concerns an issue of public interest that affects all corporations and labor organizations contemplating nonpartisan activities in connection with Federal elections.

Statement of Problem

The Federal Election Campaign Act (at 2 U.S.C. § 441b) prohibits corporations and labor organizations from making contributions or expenditures in connection with a Federal election. Certain exceptions from that general prohibition are set forth in the statute. These statutory exceptions permit a corporation or labor organization to make contributions or expenditures for communications or activities aimed at the corporation's executive and administrative personnel, stockholders and their families, or the union's members and their families. Thus, 2 U.S.C. § 441b(2)(A) and (B) specifically permit:

1. A corporation to use its treasury funds for communications or for nonpartisan registration and get-out-the-vote campaigns aimed at its stockholders and their families or at its executive or administrative personnel and their families.

2. A labor organization to use its treasury funds for communications or for nonpartisan registration and get-out-the-vote campaigns aimed at its members and their families.

While the above statutory exceptions permit contributions or expenditures for communications or activities aimed at a corporation's or labor organization's restricted class, there are no comparable statutory exceptions for communications or activities aimed at the general public. Commission regulations, however, do permit a corporation or union to use its treasury funds for communications or activities directed to individuals who are outside the restricted class—that is, to all employees of the corporation or labor organization or to the general public—provided that certain requirements are met. 11 CFR 114.4(c)

and (d) of Commission Regulations permit the following activities:

1. A corporation or labor organization may, through various communications, urge *employees* of the corporation or employees of the labor organization to register, to vote, or to otherwise participate in the electoral process, provided that the organization meets certain specified conditions designed to ensure nonpartisanship. These conditions are that the communication mentions no political affiliation and that information on particular candidates or political parties is not included unless the entire list of candidates on the ballot is reproduced (see 11 CFR 114.4(c)(1)(i) and (ii)).

2. A corporation or labor organization may reprint in whole and distribute to the *general public* official registration and voting information or materials, provided that the organization meets certain specified conditions designed to ensure nonpartisanship (see 11 CFR 114.4(c)(2)).

3. A corporation or labor organization may distribute to the *general public* voter guides and similar materials describing the candidates and their positions if the organization obtains the materials from a nonpartisan nonprofit organization and if the materials do not favor one candidate or political party over another (see 11 CFR 114.4(c)(3)).

4. A corporation or labor organization may participate in registration and get-out-the-vote drives aimed at the *general public* if the drive is jointly sponsored with and conducted by a nonpartisan nonprofit organization and if the corporation or labor organization meets other specified conditions designed to ensure nonpartisanship (see 11 CFR 114.4(d)).

The above regulations thus specifically permit a corporation or labor organization to make nonpartisan registration and voting communications directly to the corporation's or union's *employees*. There is, however, no provision which specifically permits a corporation or labor organization to use its treasury funds to make such communications directly to the *general public*. Except for official materials prepared by a State government, current regulations specifically permit a corporation or labor organization to make contributions or expenditures for communications or activities directed to the general public only with the involvement of a nonpartisan, nonprofit organization.

Any person may request an Advisory Opinion from the FEC on the application of the Federal Election Campaign Act to a proposed specific transaction or activity by the requestor. Several

corporations and labor organizations have expressed, through the Advisory Opinion procedure, interest in making nonpartisan communications directly to the general public. In certain situations, the Commission has approved the expenditure of corporate funds for nonpartisan registration and voting communications directed to the general public without the involvement of a nonpartisan nonprofit organization. (See Advisory Opinions 1980-20, Federal Election Campaign Financing Guide (CCH) ¶5487; and Advisory Opinion 1980-33, Id., ¶5500.) In order to clarify the circumstances in which corporations and labor organizations may make such nonpartisan communications, the Commission is considering the promulgation of regulations to govern such activity.

Alternatives Under Consideration

The Commission is considering the following four possible revisions to 11 CFR 114.4:

(A) Should 11 CFR 114.4 be revised to permit corporations or labor organizations to make contributions or expenditures for nonpartisan communications to the general public about registration and voting?

(B) Should 11 CFR 114.4 be revised to permit corporations or labor organizations to make contributions or expenditures to prepare and distribute to the general public publications about the record of a candidate, including the voting record of an officeholder?

(C) Should 11 CFR 114.4 be revised to permit corporations or labor organizations to make contributions or expenditures to prepare and distribute to the general public voter guides setting forth the positions of candidates on various issues?

(D) Should 11 CFR 114.4 be revised to include a provision prohibiting any activity which is not specifically permitted under that section, or should 11 CFR 114.4 be revised to include a provision permitting any activity which is indistinguishable from those activities specifically permitted under that section?

Summary of Benefits

Sectors Affected: Labor organizations and corporations in all industries, including corporations without capital stock, incorporated membership organizations, trade associations, and cooperatives.

The revisions under consideration would affect those entities whose activities come within the purview of 2 U.S.C. § 441b: corporations, labor organizations, incorporated membership organizations, trade associations,

cooperatives, and corporations without capital stock.

By clarifying which types of nonpartisan communications by corporations and labor organizations to the general public are permissible under 2 U.S.C. § 441b, the revisions under consideration will remove uncertainty as to such activity. This will make it easier for corporations and labor organizations to plan such nonpartisan activity, and will thereby encourage such activity.

It is hoped that the proposed action will provide increased voter participation, reduced costs to corporations and labor organizations in complying with 2 U.S.C. § 441b (because greater clarity in regulations will eliminate the need to seek Advisory Opinions), and reduction in Advisory Opinion workload at FEC.

Summary of Costs

Sectors Affected: None.

The alternatives under consideration would impose no obligation to make nonpartisan communications. There is, therefore, no cost imposed by any of the possible revisions.

Related Regulations and Actions

Internal: Generally, 11 CFR Part 114 ("Corporate and Labor Organization Activity").

External: None.

Active Government Collaboration

Per 2 U.S.C. § 438(f), we have informed the Internal Revenue Service of our actions.

Timetable

NPRM—Winter 1981.

Transmittal to Congress—Spring 1981.

Final Rule—30 legislative days after transmittal to Congress, if not disapproved (see 2 U.S.C. § 438(d)).

Available Documents

ANPRM—45 FR 56349, August 25, 1980.

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FEDERAL TRADE COMMISSION

The entries for credit practices and mobile homes describe rulemaking proceedings that are currently in progress. The views expressed in these entries are those of the rulemaking staff, based upon information now available. These views should not be regarded as a

final staff position, nor should they be attributed to the Commission itself, which will address the issues presented after it reviews the record.

The entries for Blue Shield, real estate brokers, and eyeglasses describe current investigations in which rulemaking is one of several options under consideration. The views expressed here are those of the investigative staff, based upon information now available. These views should not be regarded as a final staff position, nor should they be attributed to the Commission itself, which will consider whether a rulemaking proceeding or some other courses of action should be undertaken after it reviews the results of the investigation and comments in response to any advance notices of proposed rulemakings.

The entries for the standards and certification and the children's advertising rulemaking proceedings which were included in the *Calendar of Federal Regulations* published in November 1979 are not included in this edition. Descriptions of those two proceedings may be found in the *Federal Register* (44 FR 68331, November 28, 1979).

The standards and certification rulemaking is currently pending. It is affected by the Federal Trade Commission Improvements Act of 1980, Public Law 96-252. More specifically, the Federal Trade Commission's authority to issue the standards and certification rule with respect to "unfair or deceptive acts or practices" under § 18 of the FTC Act has been removed. The 1980 Act leaves unaffected whatever authority the FTC might have under any other provision of the Act to issue a rule with respect to "unfair methods of competition."

The 1980 Act suspended the children's advertising proceeding until the Federal Trade Commission votes to publish the text of a proposed rule. Additionally, any further action in the proceeding could be based only on acts or practices which are "deceptive." By order of June 18, 1980, the Commission requested the staff to analyze the rulemaking record and submit its recommendations regarding what courses of action might be undertaken by the Commission and an evaluation of them by October 15, 1980. This deadline was postponed to February 15, 1981 by Commission order dated September 30, 1980 so that the staff could conduct further discussions of alternatives to rulemaking with all interested persons. By the new date, the staff is to submit the previously requested report or a status report describing the progress of informal meetings.

With respect to any rulemaking activities and in compliance with the Federal Trade Commission Improvements Act of 1980, P.L. 96-252, a preliminary Regulatory Analysis will be issued whenever the Commission publishes a notice of proposed rulemaking, and a final Regulatory Analysis will be issued whenever the Commission promulgates a final rule.

FTC

Amendment to Eyeglasses Rule and Eyeglasses II (16 CFR Part 456*)

Legal Authority

Federal Trade Commission Act, §§ 5 and 18, 15 U.S.C. §§ 45 and 57(a).

Reason for Including This Entry

The Federal Trade Commission (FTC) is examining restrictions on the delivery of eye care services and products in an effort to ensure maximum consumer access to these goods and services at the lowest possible price, without any compromise in the quality of vision care. The Commission has authorized publication of an ANPRM requesting public comment on the issues discussed below.

Statement of Problem

The staff of the FTC's Bureau of Consumer Protection has identified a number of restrictions on delivery of eye care goods and services which may have the effect of decreasing consumer access to vision care services, increasing the cost of those services, and impeding the growth of alternative "non-traditional" eye care practices. The Commission's interest in assessing the effects of these restrictions stems from its earlier eyeglasses investigation which began in 1975, and culminated in 1978 in a new Federal regulation (16 CFR Part 456) requiring (among other things) the release of eyeglasses prescriptions following an eye examination. In that investigation, which focused on advertising restrictions, the Commission's staff became aware of a number of additional eye care restrictions which may significantly harm consumers by maintaining higher prices and limiting the accessibility to consumers of vision care products and services. The Commission staff is aware of little evidence at this time to support the assertion by proponents of these restrictions that they are necessary to protect the public health and safety.

One category of restriction under review inhibits the commercial or high-volume practice of optometry and opticianry. (Optometry is the examining

of eyes and the prescribing of corrective lenses, and opticianry is the dispensing of eyeglasses.) For example, many States prohibit opticians and optometrists from working for nonprofessional corporations or department stores, or from locating in high-traffic commercial locations, such as shopping centers. Many States also ban the use of trade names by practitioners, or place restrictions on the number of branch offices they may operate.

Proponents of these restraints argue that they are needed to guard against low quality vision care. They argue that the practice of optometry in commercial settings invites the intrusion of profit motives into the profession, resulting in poor quality, incomplete examinations, or unnecessary prescribing of corrective lenses. Bans against the use of trade names are justified by the additional argument that they protect consumers from deception.

The effect of these laws may be to prevent individual practitioners from locating in areas such as shopping centers, where the potential for developing high-volume, lower cost operations, such as optical chains, exists. They may also limit the ability of opticians, optical chains, and department stores to compete, and, according to preliminary evidence, may result in an increase in consumer prices. Finally, branching and location restrictions may restrict consumer accessibility to vision care, especially affecting the elderly and other less mobile members of society. Both higher prices and decreased accessibility may mean that some consumers receive no care at all or obtain vision care less frequently than they otherwise would.

The second category of restrictions which the FTC staff has examined consists of those prohibiting opticians from (1) duplication, a process whereby a new eyeglass lens is produced by analyzing the prescription of an existing lens, and (2) fitting of contact lenses. These restrictions, may limit the consumer's ability to comparison shop for eyeglasses or contact lenses, particularly when consumers are not given a copy of their prescriptions following the initial sale of eyeglasses and contact lenses. The Commission's Eyeglasses Rule currently mandates prescription release only after the eye examination, and not after the dispensing of prescription lenses.

Approximately twelve States prohibit opticians from duplicating a new eyeglass lens from an existing lens. One of the justifications advanced in support of such prohibitions is that opticians may not be able to duplicate eyeglasses

accurately from an existing pair. The FTC staff conducted a study which was designed to measure the accuracy of the duplication process. The results indicate that there appears to be some potential for introducing a significant margin of error through the duplication process. However, even in States where duplication is prohibited, an optician is permitted to make new eyeglass lenses from a valid prescription. Thus, if the consumer has been provided with a copy of his or her prescription following the initial sale of eyeglasses (i.e., a "re-release" procedure), he or she could use that prescription to purchase new eyeglass lenses from any optician, so that comparison shopping would be facilitated while any problems in the duplication process would be avoided.

A possible concern with such a "re-release" procedure is that it will enable the consumer to bypass regular eye examinations. However, staff is unaware of any State which presently requires an additional eye examination before the purchase of new eyeglasses if the seller already possesses a valid prescription for the consumer. Thus, even in States where duplication is proscribed, a consumer can purchase additional eyeglasses from his or her initial seller without further eye examinations.

Certain States also prohibit opticians from fitting contact lenses. It has been argued that these restrictions are necessary on the ground that opticians may not be adequately trained to perform this function. The FTC staff has designed a study of recently fitted contact lens wearers in an attempt to generate comparative empirical data about relative quality and prices of lenses in States which restrict opticians from fitting contact lenses and those States which do not.

Alternatives Under Consideration

Various options are available to the Commission if it decides to proceed in this area, including an amendment to its Eyeglasses I Rule, the promulgation of new trade regulation rule provisions, a formal complaint against private parties alleged to have engaged in unfair acts or practices, a voluntary guide defining unfair acts or practices, legislative recommendations to Congress or to the States (including development of model State laws), or a public report setting forth the findings of the staff, or no action. On September 17, 1980, the Commission authorized publication of a Federal Register notice requesting public comment on the options open to it. A discussion of some of these options follows.

A. Staff Recommendations

The FTC staff has written a report recommending that the Commission (1) commence a rulemaking proceeding to examine commercial practice restrictions and (2) propose amendments to the Eyeglasses I Rule concerning release of eyeglass and contact lens prescriptions following the dispensing of those ophthalmic goods.

The staff's proposal concerning commercial practice restraints would remove certain restrictions on the practice of optometry and opticianry in commercial settings. Economic evidence indicates that these restrictions may raise consumer prices and that the argued justifications be without merit. The staff proposal, however, would not interfere with the State's ability to control any perceived abusive practices through more direct regulation rather than broad restrictions aimed at banning commercial practice altogether. For example, to the extent that a State is concerned with the thoroughness of eye examinations offered by eye doctors, the State would remain free to enact minimum eye examination standards.

The staff has also recommended that the Commission extend the prescription release requirement of the Eyeglasses I Rule to require that upon filling a prescription for spectacle lenses, the dispenser (whether an ophthalmologist, optometrist, or optician) return the prescription to the consumer. This would enable the consumer to obtain replacement or duplicate pairs of eyeglasses from the provider of his or her choice, and should enhance competition among dispensers. Under this recommendation, States or individual eye doctors would be free to impose a reasonable expiration date on the prescription.

The staff has also recommended that questions concerning the fitting of initial contact lenses by opticians be explored in public hearings which could result in the issuance of a model State law.

Finally, the staff has recommended that the Commission expand the release-of-prescription requirement in the Eyeglasses I Rule to require that the original contact lens fitter provide each consumer with a copy of his or her complete contact lens specifications at the completion of the initial contact lens fitting process. This would enable consumers to obtain replacement contact lenses from the dispenser of their choice.

B. Other Options

In addition to the staff recommendations, the Commission is considering alternative courses of

action. One of the alternatives is a publication of a Commission report along with a model State law for review by the States. Such a model statute might, for example, permit optometrists and opticians to practice in commercial settings but at the same time ensure protection of quality of care by including minimum standards for eye examinations and equipment and the protection of the doctor-patient relationship.

Another alternative would be the issuance of a voluntary guide, including some or all of the provisions recommended by the Commission's staff for a rulemaking. A guide could define, for example, the kinds of private restrictions on commercial practice that the Commission believed unjustifiably inhibited competition among eye care providers or consumer access to alternative, low cost eye care goods and services.

Summary of Benefits

Sectors Affected: The retail ophthalmic industry and primarily three groups within that industry: ophthalmologists, optometrists, and opticians; and consumers of eyeglasses and contact lenses.

The Commission's staff estimates that the removal of commercial practice restraints should benefit consumers by reducing vision care costs and making vision care more accessible. In this regard, the Commission's Bureau of Economics (BE) conducted a study which compared prices charged for eye examinations and eyeglasses in cities where commercial optometry exists and in cities where it is restricted. The data, collected in late 1977 and early 1978, suggest that (1) prices are significantly lower in cities where commercial practice and advertising are not restricted; (2) commercial optometrists charged lower prices than noncommercial optometrists; and (3) noncommercial providers who operated in markets where commercial practice was permitted charged less than those noncommercial providers working in markets where commercial practice was prohibited.

The BE Study also found that optometrists charged an average of \$72 for an eye examination and eyeglasses in markets where commercial practice was permitted, as opposed to \$94 in restrictive cities. Given the substantial size of this industry, consumers annually spend approximately \$2.7 billion for ophthalmic goods and an additional \$1 billion for eye examinations. There may be considerable savings to consumers if commercial practice restrictions are lessened or eliminated.

The lifting of commercial practice restraints may also facilitate the growth of commercial chains or volume practices because practitioners would be able to locate in high-traffic commercial areas, have branch offices, and be employed by lay individuals and firms. Such firms could compete with other traditional dispensers of optical goods, with a very possible effect of generating lower prices to consumers. In addition, such changes may provide consumers with a wider choice of providers and greater accessibility to vision care.

If the Commission were to adopt a requirement that the person who fills an eyeglasses prescription must return the prescription, consumers would be able to have their prescriptions refilled by sellers of their choice without necessarily obtaining another eye examination. Such a "re-release" requirement, by enabling consumers to engage in comparison-shopping for replacement lenses, could increase competition and lead to lower prices. In addition, the re-release requirement recommended by the staff should fully protect the quality of care received by consumers who wish a duplicate or replacement pair of eyeglasses which reproduce the visual correction present in their existing eyeglasses. The duplication process, on the other hand, may have some potential for error, according to preliminary evidence reviewed by the staff.

Under the staff's recommendation, States or individual eye doctors would be free to impose a reasonable expiration date on the prescription. Such a requirement would prevent consumers from bypassing needed examinations by obtaining duplicate or replacement lenses with an outdated prescription.

If the Commission were to adopt a provision which requires original contact lens fitters to release complete contact lens specifications after the initial fitting, consumers would be able to engage in comparison shopping for replacement lenses. The market for replacement lenses appears to be substantial: preliminary data indicate that contact lens wearers purchase, on the average, one new lens per year. Furthermore, the data suggest that there may be a wide price disparity for replacement lenses ranging from \$1 to \$90 per replacement lens. Such a provision could enable consumers who have been forced to purchase replacement lenses from higher-priced providers to obtain lenses from lower-priced providers without undergoing a new fitting procedure. (Although there is no currently available evidence that

lower-priced providers of contact lenses offer lower quality goods or services, data from the FTC's contact lens study will provide information concerning comparative quality and any possible tradeoffs between quality and price.)

Summary of Costs

Sectors Affected: The retail ophthalmic industry and primarily three groups within that industry: ophthalmologists, optometrists, and opticians; and States.

In assessing the costs of possible Commission action, it should be understood that this proposal is essentially deregulatory, not regulatory. That is, the investigation seeks to enhance competition by eliminating restrictions on the marketplace which may be unnecessary.

One cost associated with removal of present commercial restrictions may involve the issue of quality of care. While removal of these restrictions may lower consumer prices, it is necessary to determine whether their removal would involve any decrease in the quality of care received by the public. Before any action is taken, the Commission must determine what, if any, effect there will be if such restrictions are removed.

Results from the Bureau of Economics Study indicate that commercial or chain firm optometrists derived the correct prescription and produced accurate eyeglasses no less frequently than noncommercial optometrists. Moreover, the study found no difference between commercial optometrists and noncommercial optometrists in the incidence of prescribing of unnecessary eyeglasses. On the other hand, the data also indicated that examinations given by commercial optometrists may be less thorough than the examinations given by noncommercial providers when measured by the number of procedures or tests performed during the examinations. (The study did not measure whether the practitioners performed the procedures correctly.)

If instead of restricting commercial practices the States were solely to impose requirements to control specific abusive practices (for example, by setting minimum eye examination requirements to ensure that all practitioners provide thorough examinations), the States would have to bear the costs of monitoring compliance with those requirements, and it is possible that the prices of vision care would be affected.

The Commission staff does not yet know exactly what costs would be associated with a requirement that a seller return an eyeglass prescription to the purchaser, or a requirement that the

original contact lens fitters release complete contact lens specifications to their customers following the fitting process. As noted above, data from the FTC's contact lens study will provide information concerning comparative quality of contact lenses fitted by lower-priced providers and possible tradeoffs between price and quality.

If the Commission were ultimately to promulgate a rule requiring that when an eyeglass prescription is filled the seller return it to the patient, the compliance cost should be minimal, involving only the time and material for the seller to write a copy of the prescription. If the Commission were to require ophthalmologists and optometrists to release complete contact lens specifications following the initial contact lens fitting so that consumers can obtain replacement contact lenses from a fitter of their choice, the compliance cost should be, again, minimal.

Related Regulations and Actions

Internal: The Advertising of Ophthalmic Goods and Services Trade Regulation Rule (16 CFR Part 456).

External: Various State laws restricting commercial vision care practices and the ability of opticians to fit contact lenses and duplicate lenses without a prescription.

Active Government Collaboration

None.

Timetable

Public Comment Period—Following issuance of ANPRM, November 1980–January 1981. Comments should be submitted to: Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue, N.W., Room 281, Washington, DC 20580, Attention: Eyeglasses II.

The Commission staff has recommended the issuance of an amendment to the Eyeglasses I Rule's prescription release requirement and new trade regulation provisions which would remove certain State-imposed restrictions on commercial practice. The Commission has decided to issue an ANPRM requesting comment on staff's recommendations and on alternative courses of action which the Commission might take. At the conclusion of the comment period, the FTC staff will review the comments and reevaluate its recommendations. Following this review, the staff will make its next set of recommendations and the Commission will decide what action, if any, it should take in this area.

Available Documents

All are available from Room 281, Federal Trade Commission, Washington, DC 20580.

ANPRM—to be published in the *Federal Register* in November 1980. "Staff Report on the Advertising of Ophthalmic Goods and Services and Proposed Trade Regulation Rule (16 CFR Part 456)," dated May 1977.

"A Comparison of a Random Sample of Eyeglasses," prepared by Resource Planning Corporation for the Federal Trade Commission, dated July 2, 1979.

"Advertising and Commercialism in the Profession: The Case of Optometry," prepared by the FTC's Bureau of Economics, April 1980.

"State Restrictions on Vision Care Providers: The Effects on Consumers (Eyeglasses II)," Report of the Staff to the Federal Trade Commission, July 1980.

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FTC

Medical Participation in Control of Certain Open-Panel Medical Prepayment Plans (16 CFR Chapter 1*)

Legal Authority

Federal Trade Commission Act §§ 5 and 6, 15 U.S.C. §§ 45 and 46.

Reason for Including This Entry

Two Federal Trade Commission (FTC) staff reports which analyze medical participation in control of Blue Shield and other open-panel medical prepayment plans suggest that control of these plans by physician organizations may reduce competition in the provision of health care services and may raise the prices of these services. The issues raised are important because of the continuing rise of medical care costs and the public interest in identifying appropriate ways to contain these cost increases.

Statement of Problem

Blue Shield and other open-panel medical prepayment plans pay for or deliver care to patients principally through physicians who compete with each other to provide services that are covered by the prepayment plans. In general, patients subscribing to "open-panel plans" may use virtually any physician practicing in the area served by the plan. This characteristic distinguishes open-panel plans from

other plans where care is delivered through physicians who are employed by the plans or who comprise a relatively small percentage of the physicians in the area.

Blue Shield plans make up the largest system of open-panel medical prepayment plans in the Nation. The 70 Blue Shield plans operating in the United States today cover about 40 percent of the population of the Nation and control or administer payment of about a quarter of all funds paid for the services of physicians. In 1976, Blue Shield plans paid out over \$3.8 billion to settle claims on their underwritten coverage. Other open-panel plans—variously called medical service bureaus, foundations for medical care, and/or individual practice association-type health maintenance organizations (IPA-type HMOs)—cover a small but rapidly growing portion of the population of the Nation. The Commission's current inquiry deals with issues relating to the control of such open-panel plans by medical societies and other groups of physicians.

In April 1979, the Bureau of Competition's (BC) staff of the FTC submitted to the Commission a report entitled "Medical Participation in Control of Blue Shield and Certain Other Open-Panel Medical Prepayment Plans," which notes that many members of such boards frequently have been selected by medical societies and other groups of physicians whose services were paid for by the plan. The report points out that as of 1978, for example, medical societies and other physician groups formally participated in the selection of some members of the boards of directors of 47 of the 70 Blue Shield plans and selected a majority of the boards of directors of 32 plans. Thirty-one plans had physician majorities on their boards, and virtually all plans had physician-dominated committees that made decisions about payments and coverages.

The staff report expresses the concern that groups of competing physicians, such as State and local medical societies, may control or participate in the control of many Blue Shield and other open-panel plans. When such physician groups elect members on the boards of directors, or otherwise participate in control of plans, they may be able to control or influence plan decisions about how much to pay physicians, which physicians or other health professionals to pay for covered services, what cost-containment mechanisms to employ, and other matters that may affect competition and costs in the professional health services sector of the Nation's economy.

The staff report concludes that there is reason to believe that control or participation in the control of open-panel medical prepayment plans by physician organizations impairs competition among physicians and between physician and nonphysician providers of health care services, and thus may be an unfair method of competition in violation of § 5 of the Federal Trade Commission Act.

In November 1979, the Bureau of Economics (BE) of the FTC published a staff study titled "Physician Control of Blue Shield Plans." The results of the study, which assessed the relationship between medical society participation in plan governance and reimbursement rates for selected medical procedures, were that (other factors being equal) Blue Shield reimbursement rates in 1977 were 16 percent higher where a local medical society selected plan board members. The study also reported that five other measures of participation by physicians in plan governance were correlated with higher reimbursement rates. The study suggested that medical control of plans has little relation to plan administrative costs.

Alternatives Under Consideration

The Commission has not decided whether or not to take action on the basis of the recommendations set forth in these reports, but the Commission did conclude that the reports raise a number of important issues, especially in light of the rapid escalation of the cost of health care. Is there a relationship between medical participation in control of Blue Shield and other open-panel medical prepayment plans, and the increase in fees charged by physicians? Does a plan controlled by a physician organization have less incentive than one which is not controlled to attempt to keep down physicians' fees and to pay the fees of nonphysician providers of health care? What are the benefits of medical participation in these plans, and can these benefits be obtained if physician groups do not control the plan? In public policy terms, is such control or participation in control in the public interest? And in terms of § 5 of the Federal Trade Commission Act, is such control or participation in control an unlawful restraint of trade?

Before considering these issues, however, the Commission decided to solicit comments on its staff's analyses, on the facts supporting the reports written by BC and BE staff, and on certain specific areas of concern. The Commission concluded that such public comment may enhance its understanding of the issues which should be considered in determining

what action, if any, to take. Therefore, on March 17, 1980, the Commission issued a Request for Comment and ANPRM. Commission staff is presently digesting and analyzing the more than 250 comments which were received in response to this Request for Comment.

The first specific area about which the Commission has solicited comment concerns the degree and types of medical participation in control of open-panel medical prepayment plans which may lead to anticompetitive effects. More specifically, when physician organizations participate in the selection of plan board members, do they represent the interest of the medical profession as a whole, thus posing antitrust concerns? Do these concerns depend on the nature of the physician organization? For example, does participation in control by groups of "participating physicians"—that is, physicians who have agreed to abide by the plan's payment terms and cost-containment programs—present less of a problem than participation by medical societies or other more highly organized groups? Similarly, do these concerns depend on the extent of this participation? For example, does participation on plan boards by a minority consisting of representatives of a physician organization pose a sufficient danger of anticompetitive effects that, on balance, it should be forbidden? The Commission also asked whether any action it might take should be focused on plan boards, or whether it should also consider ways by which physician organizations might participate in plan decisions through control of plan committees, or by reason of plan delegation of decisions to medical societies or other physician organizations.

A second area of specific questions raised by the Commission concerns the role of governing bodies whose members choose their own successors. The BC staff report indicates the possibility that plans currently controlled by boards selected by physician organizations will make decisions which will perpetuate the influence of the physician organization. Staff raises a similar concern about plans which have recently changed from boards with physician organization control to self-perpetuating boards. The Commission has asked if this is a serious problem, and if so, how to deal with it.

Another significant area of Commission interest concerns the types of plans to which the analysis of the staff should apply. As discussed above, the open-panel plans, which make up

the Blue Shield system, comprise the largest system of medical prepayment plans in the Nation, and medical control of these plans would appear to have the most immediate and substantial impact on the professional health care sector. However, there apparently also exists a growing number of other open-panel medical prepayment plans which the staff report indicates may operate like Blue Shield member plans and may raise the same issues as medical participation in control of Blue Shield. Others have asserted that these plans in general, and individual practice association-type (IPA-type) plans in particular, have enhanced competition, and that medical participation in the governance of such plans either has been beneficial or, at worst, has had little effect on competition. In addition, the Office of HMOs of the Department of Health and Human Services has asserted that its regulations are sufficient to alleviate any problem which may exist insofar as it relates to federally qualified IPA-type HMOs. The Commission has also invited comments on each of these positions, and on the staff's suggestion that its analysis should apply only to plans that will pay more than 50 percent of the physicians practicing in their areas for nonemergency services they provide to subscribers. The basis for this suggestion is that plans which will reimburse a relatively small group of physicians may increase competition in the medical service market, and medical control of such plans may not be anticompetitive. The Commission is also questioning various alternatives, including the possibility of applying the staff's analysis only to Blue Shield plans, or only to plans that cover more than a specified percentage of the population of their service areas.

The Commission also sought specific comment on procedures it should use to further explore these issues if the Commission determines that this is appropriate. While the staff points out that the choice among procedural options is not clear-cut, the staff report concluded that rulemaking would be the fairest and most efficient way to address the problem, because it allows the Commission to consider, and the public to present, all of the facts, policy considerations, and possible remedies in one forum, and does not single out any one plan. The staff points out that one alternative approach would be for the Commission to issue one or several complaints bringing suit against physician organizations and/or plans which present the problems discussed in its report. In addition, the Commission has noted that at least three other

alternatives are open to it. First, the Commission might consider issuing an industry guide to provide a basis for voluntary abandonment of inappropriate and illegal relationships. Second, the Commission might prepare a report to the Congress or to the States on these issues. Finally, the Commission might issue a complaint against Blue Shield Association (BSA) and/or conclude that BSA's assurance that it will move toward the goals of minimizing medical society involvement on plan boards and committees is sufficient to resolve the problems presented by the staff report.

Commission action resulting from this investigation would be designed to promote free market competition. Rulemaking in this matter would not create any new regulatory requirement, but rather would be designed to clarify existing law with respect to whether and to what extent the antitrust laws permit physician organizations to participate in controlling medical prepayment plans. The alternatives being considered, such as traditional case-by-case antitrust enforcement, also seek to improve the health care system by means of competition instead of regulation.

Summary of Benefits

Sectors Affected: Subscribers to hospital and medical service plans, particularly open-panel medical prepayment plans; alternate health care delivery systems, including closed-panel HMOs and independent open-panel hospital and medical service plans; nonphysician providers of health care services; medical groups; and the general public.

In recommending alternative methods by which the Commission might challenge the structural ties between physician organizations and open-panel medical prepayment plans, the staff is proposing termination of what may be an antitrust violation. Such action also may promote competition in the health services sector by permitting open-panel plans to make their payment, benefit, and coverage decisions in an independent manner. Increased competition may help to hold down health care costs by (1) increasing the incentives of open-panel plans to hold down the level of physicians' fees and to provide appropriate coverage for the services of nonphysicians; (2) encouraging commercial insurers to seek to hold down the costs of health care services; and (3) providing an environment in which alternative health care delivery systems, including closed-panel health maintenance organizations and independent, open-panel plans, have a full opportunity to compete.

The Commission staff cannot, at this time, calculate specific cost savings that would result, as they would depend on the specific course of action taken. However, the staff believes cost savings would be substantial. The BE study indicates that medical participation in the control of Blue Shield plans leads to significantly higher reimbursement levels.

The benefits summarized above would most probably result regardless of the particular means of enforcement, but the immediacy and magnitude of such benefits to subscribers and consumers would depend upon the length of time the market might take to respond to whatever action the Commission might choose to pursue.

Summary of Costs

Sectors Affected: Open-panel medical prepayment plans; physicians receiving payment from these plans; physician organizations which control or participate in the control of these plans; and subscribers to these plans.

One type of direct cost which might occur because of Commission action would be the administrative costs involved in changing the way affected plans would be governed. The staff has not yet attempted to estimate the amount of these costs. It is possible that some indirect costs might occur if medical societies react to any Commission action in ways which may interrupt the ability of some plans to offer paid-in-full coverage to subscribers, or to implement certain kinds of cost-control programs. It is also possible that any Commission action which has the general effect of dissuading medical societies from establishing and operating prepayment plans open to all physicians in the community may reduce the number of such plans that are formed; however, such action might also have the beneficial effect of increasing the number of smaller plans, each of which would consist of a limited number of physicians.

For example, if, as a result of Commission action, plans were encouraged to achieve compliance with procompetitive standards through a market-oriented mechanism, such as one which enabled each plan to find its own most effective means of compliance, disruption of the market and decreased entry might be avoided or minimized. The Commission and staff are actively considering various alternatives in an effort to minimize the direct and indirect costs of enforcement and compliance.

Related Regulations and Actions

Internal: The Commission has an ongoing program of investigation of competitive restraints in the health care sector.

External: A number of States have laws governing the composition of health plans' boards of directors. These health laws would not be affected by any staff proposal now under consideration. In some States, such as Pennsylvania, these laws have recently been amended to reduce medical participation in the control of Blue Shield plans. In other States, including Ohio and Indiana, court suits or administrative actions have been undertaken for the same purpose. Other States, including New York and Virginia, have recently studied the relationship between plans and medical societies.

The Department of Health and Human Services has published a notice of intent to issue a regulation prohibiting doctors, hospital administrators, and others with financial interests in the health care industry from dominating the governing body of any carrier or intermediary that participates in the Medicare program or any fiscal agent that participates in the Medicaid program. The National Health Plan legislation recently proposed by the executive branch would also impose restrictions on the proportion of the boards of plans administering that program which may be physicians or selected by physicians. The General Accounting Office has also conducted an econometric study relating to these concerns.

Active Government Collaboration

The Bureau of Competition and Bureau of Economics staff have consulted with numerous other Federal and State agencies in the course of preparing their reports. The staff also solicited the views of both Federal agencies and the States in the course of the comment period.

Timetable

Comment Period Concluded—May 16, 1980.

Commission Consideration of Staff Recommendations—Summer/fall 1980.

Commission Decision on Implementation of Staff Recommendations—Fall/winter 1980/81.

Available Documents

ANPRM—45 FR 17019 (March 17, 1980).

Public comments are available for review in Room 130, at the address below.

Bureau of Competition, "Medical Participation in Control of Blue Shield and Certain Other Open-Panel Medical Prepayment Plans", Staff Report to the Federal Trade Commission and Proposed Trade Regulation Rule, April 1979.

Bureau of Economics, Staff Report on Physician Control of Blue Shield Plans, November 1979.

Copies of these documents may be obtained from: Public Reference Room (Room 130), Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, DC 20580, (202) 523-3598.

In addition, the public may review and obtain at the above address during normal business hours comments and materials submitted by Blue Shield Association, The American Association of Foundation for Medical Care, and other parties.

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Bureau of Competition
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FTC

Proposed Trade Regulation Rule on Mobile Home Sales and Service (16 CFR Part 441)

Legal Authority

Federal Trade Commission Act, §§ 5 and 18, 15 U.S.C. §§ 45 and 57(a).

Reason for Including This Entry

Mobile homes are an important segment of the housing industry, with annual sales of approximately 275,000 units. The recommended rule of the Federal Trade Commission (FTC) staff seeks to enhance fair competition in the mobile home industry by establishing certain requirements and incentives designed to ensure that mobile home manufacturers fulfill warranty obligations. Therefore the rule could have a significant impact on the mobile home segment of the housing market.

Statement of Problem

Most mobile home manufacturers offer a 1-year written warranty to cover defects in the materials and workmanship of the home. This warranty obligates them to repair defects. However, the FTC staff believes, on the basis of the rulemaking record developed, that some

manufacturers and dealers have failed in a significant number of instances to provide adequate warranty service to the homeowner.

The record indicates that many mobile homeowners discover defects in their new mobile homes, including water leaks, malfunctioning plumbing, buckled frames, and inoperative windows and doors. Such problems may have been caused by factory defects or improper transportation or installation of the mobile home. In some cases, severe problems—for example, lack of electricity and heat—may threaten the safety of the homeowner and make the mobile home uninhabitable.

Nonetheless, when consumers seek warranty repairs, some manufacturers and dealers often refuse service or delay repairs beyond a reasonable time. In some instances, when manufacturers and dealers attempt repairs, they do not adequately remedy the problem.

These problems in providing adequate warranty service indicate that mobile home manufacturers and dealers may not have adequate service systems to properly perform their warranties. Their warranty systems appear to be deficient in several ways. First, although dealers perform much of the warranty work, the evidence indicates that many manufacturers fail to clearly allocate service responsibilities between themselves and their dealers. As a result, disputes between manufacturers and dealers can delay warranty service. Second, some manufacturers and dealers fail to have sufficient parts, service personnel, and equipment to fulfill consumer requests for repairs. Finally, some manufacturers do not properly monitor their dealers to determine if they have completed repairs. Because they do not have an adequate warranty performance system, some manufacturers and dealers are not able to provide prompt and competent warranty repairs for mobile homeowners. In addition, disputes over the responsibility for defects caused by transportation and installation (set-up) of the home also impede and delay warranty repairs.

The Federal Trade Commission's investigation into warranty service problems in the mobile home industry initially led to consent orders against four major manufacturers. (A consent order is an agreement between the Commission and a company, in which the company agrees to change certain of its business practices. The agreement is not an admission of wrongdoing by the company.) Under the orders, the companies agreed to take specific steps to improve their warranty service programs. Shortly after the consent

agreements were entered into, the Commission began this rulemaking proceeding because it had reason to believe that substantial numbers of mobile home purchasers receive inadequate warranty service, and that an industrywide approach to this problem might be necessary.

Commission staff recently issued a report and recommended a rule concerning warranty practices in the mobile home industry. The recommended rule contains substantial modifications and deletions from the rule (40 FR 23334, May 29, 1975) that had been proposed. The recommended rule seeks to improve warranty service by setting time limits within which the warrantor must complete warranty repairs, and by requiring manufacturers or their service agents to perform pre-occupancy inspections of the home. It would also require that manufacturers who offer written warranties on mobile homes maintain recordkeeping systems and disseminate a consumer questionnaire to monitor the adequacy of factory and dealer repairs. The recommended rule also would require that manufacturers enter into written service agreements with dealers and others who perform warranty repairs. Under the rule, written warranties must include specific time deadlines for service; set-up and transportation damage cannot be excluded; and repairs cannot be contingent on return of the home to the factory or return of a registration card. Some mobile home manufacturers have used clauses in their written warranties requiring that a warranty registration card be returned to validate the warranty or as a precondition to receiving free warranty service.

Alternatives Under Consideration

In contrast to the detailed requirements of the original proposed rule, the recommended rule sets general performance standards for warranty service and warranty service systems, and does not contain many of the original provisions proposed in 1975. The use of performance standards should allow industry flexibility to develop its own specific systems and procedures. To illustrate this approach, the original proposal addressed alleged problems in the manufacturers handling of consumer complaints by requiring (1) implementation of a specific system to process complaints; (2) designation of a corporate focal point to handle complaints, with responsibility vested in non-sales personnel; (3) recordkeeping; and (4) regular review and periodic reports on the effectiveness of complaint handling procedures. In contrast, the

rule now recommended by staff only requires warrantors to resolve complaints in 30 days and to keep records concerning such complaints. Similarly, the 1975 proposal contained detailed requirements for the manufacturer's evaluation of prospective new dealers, including periodic visits to the dealer's sales lot. We have deleted these provisions from the recommended rule on the basis that the recommended service deadlines—as well as Federal warranty law, which places ultimate responsibility for warranty performance on the manufacturer that offers a written warranty—provide sufficient incentives for manufacturers to develop their own cost-effective evaluation mechanisms.

The Commission and the staff will further evaluate the need for each of the provisions of the recommended rule based on a review of the written comments being received on the recently released staff report. While we have designed the provisions of the recommended rule as performance standards for warranty service and service systems, we still must resolve the appropriate degree of flexibility for each rule provision. For instance, the recommended rule sets specific time deadlines for warranty repairs. These deadlines are consistent with some present industry policies and some State laws. A possible alternative would be to allow individual manufacturers and dealers to set their own deadlines, so long as they were disclosed in their warranties.

The recommended rule sets out eight issues that must be addressed in the written service agreement between the manufacturer and dealer. If we retain specific service deadlines and related requirements in any final rule that is promulgated, this may obviate the need for the written agreement to include some of the terms that essentially track obligations the recommended rule would impose on manufacturers.

We also will consider the need to mandate a pre-occupancy inspection by the warrantor or his agent. Industry members consider such an inspection to be a beneficial procedure, and at present industry inspects about half of all new mobile homes. Given these facts and that other provisions of the rule create strong incentives for timely warranty service, many manufacturers may independently decide to perform inspections.

The recommended rule requires warrantors to assume responsibility for set-up and transportation damage. While this requirement should eliminate manufacturer-dealer disputes as to the cause and responsibility for defects, we

will consider further whether ultimate liability for such defects should rest on the manufacturer.

Finally, the recommended rule requires manufacturers to monitor the effectiveness of factory and dealer warranty repairs by maintaining service records and disseminating consumer questionnaires. The questionnaire should provide a low-cost means of monitoring dealer service. Because the questionnaire will also enable consumers to list in one place all remaining defects at a specified time, service costs thereby could be lessened by reducing the number of service calls. Since the recommended rule would require manufacturers to monitor warranty repairs, an alternative may be to have manufacturers select their own monitoring devices, rather than require the use of a questionnaire.

Summary of Benefits

Sectors Affected: Purchasers of mobile homes, mobile home and mobile home dealers manufacturers.

By ensuring that manufacturers meet warranty obligations, the recommended rule should heighten industry competition by removing unjustified advantages that may be enjoyed by companies that appear to offer warranty coverage, but breach their warranties. It would allow reputable manufacturers to communicate the effectiveness of their warranty repair program through written warranties and would enable consumers to rely on competing warranty claims when making their decision to select a particular brand.

Owners of new mobile homes would receive more prompt and competent warranty service. Survey data on the rulemaking record from California and Ohio indicate that as many as 80 percent of new mobile homes have defects, and 40 percent of the mobile homeowners who request service have been unsuccessful in obtaining adequate repairs. Thus, significant numbers of owners either have to pay for repairs themselves or suffer the inconvenience of defective homes. Improved warranty service may reduce these problems. Moreover, consumers may benefit from inspections that provide early detection and repair of problems. Because many defects can lead to more serious structural damage if not promptly repaired, the recommended rule may also prolong the useful life of mobile homes and, thus, increase their resale value. This, in turn, may lead to more favorable financing terms for purchasers of mobile homes and should make mobile homes a more attractive investment, providing consumers with a

less costly but reliable alternative to site-built homes.

The recommended rule may also encourage warrantors to reduce customer claims by voluntarily correcting the underlying causes of defects. For example, manufacturers may find it less costly to comply if they build better homes that require less warranty service, thereby providing a clear benefit to consumers.

Summary of Costs

Sectors Affected: Mobile home manufacturers and dealers, particularly firms not presently providing adequate warranty service.

The proposed rule would affect the business practices of some 200 mobile home manufacturers (Standard Industrial Classification 2451) and approximately 12,000 mobile home dealers.

The recommended rule would affect most heavily those firms that do not presently provide adequate warranty service. For such companies, we estimate that the total costs to comply with the rule recommended in the staff report would be a maximum of \$120 per home. This figure represented approximately 1 percent of the average wholesale price of a new home in 1978. Other companies would experience lower compliance costs. Our projections are based in part upon an analysis of records submitted in 1977 by the four mobile home manufacturers that are operating under consent orders. These estimates of compliance costs are based on the terms of the recommended rule and may change significantly if it is modified.

We can generally assign industry compliance costs to one of three categories: (1) administrative and other overhead costs, (2) inspections, and (3) additional repairs to mobile homes. Many of the provisions of the original proposed rule that imposed purely administrative costs have been eliminated. We estimate that administrative costs for the recommended rule will represent a maximum per-home cost increase of about \$5.00 to \$10.00 for large manufacturers, \$13.00 for medium-sized producers, and \$25.00 for small firms, assuming that no corporate officials now work on warranty matters. Since most companies currently assign at least some corporate personnel to their warranty programs, the net cost increase should be substantially below these estimates.

Manufacturers would also incur other overhead costs through compliance with the service agreement and questionnaire provisions of the recommended rule.

The cost to manufacturers of entering into written agreements should be concentrated in the first year of compliance and therefore should have minimal effect on prices in the long run. For the most part, the long run impact will depend on the frequency with which manufacturers affiliate with new dealers. Responses from the companies currently under Commission order indicate that legal costs for drafting the written service contracts should not exceed about \$2.00 per home for the medium-sized manufacturer. We estimate that such costs would be less than \$1.00 for large manufacturers and should not exceed \$5.00 for small companies. Based upon the experience of the consent order companies, the required consumer questionnaires should cost no more than \$5.00 per home to print, distribute, and tabulate. Adding this figure to the other costs brings the total administrative and overhead compliance costs of the recommended rule to a maximum of \$35.00 per home for small firms, \$20.00 for medium firms, and \$16.00 for large firms.

Analysis of data from the companies under the consent orders indicates that each of the required pre-occupancy inspections of mobile homes costs these manufacturers about \$50.00. Since half of all new mobile homes are already inspected, total industry compliance costs should not exceed \$25.00 per unit. These estimates include reimbursements to dealers for travel and all inspection expenses. Furthermore, because the total number of inspections will depend directly upon the number of homes sold, large and small manufacturers will spend approximately the same amount per home to meet the inspection requirements of the proposed rule.

It is difficult to estimate the magnitude of increases in warranty costs related to repairs or general increases in warranty expenditures resulting from more diligent attention to customer complaints, as the recommended rule presumably could motivate producers to lower the incidence of defective homes. Specifically, manufacturers can be expected to introduce quality control improvements whenever the cost is justified by expected future savings in warranty expenditures. In addition, a pre-occupancy inspection should permit dealers to spot and correct installation problems before costly structural problems result and would therefore reduce overall warranty service expenditures.

We estimate that additional expenditures for each different size of manufacturer for the warranty service

under the recommended rule should be approximately \$0 to \$75 per home, depending on the present level of service provided. Companies that already meet the recommended requirements should experience no additional costs. Firms on the other end of the service and quality spectrum could expect to incur substantial costs, perhaps greater than the \$75.00 estimate. However, if industry service costs increase more than \$75.00 per home, it will be because we have underestimated the seriousness of current warranty problems and thus the benefits to be achieved by strengthening warranty performance. Thus, total compliance costs for administration, overhead, inspection, and service should not exceed \$120 per home for medium size firms. Comparable maximums for large firms would be \$115.00 per unit and for small firms \$135.00. These costs should not have an unfair impact on small manufacturers, since most of the cost (direct warranty service) will vary by the number of homes sold. Manufacturers would probably attempt to increase prices by an equivalent amount, though competitive pressures from firms with more effective warranty systems and lower compliance costs might prevent a full cost pass-through to consumers.

The recommended rule should not alter the competitive structure of the industry significantly. We have investigated whether the rule will encourage manufacturers to integrate vertically into retailing or enter into exclusive franchising agreements with dealers. Even the largest manufacturers would probably find the capital costs of establishing a large network of company-owned retail outlets to be prohibitive. The record also documents that dealers would not find exclusive franchises (representing one manufacturer) as profitable as their present practice of representing four to five manufacturers. Since consumers generally do not select mobile homes on the basis of brand reputation, dealers currently compete for sales by offering the widest possible selection of homes in varying price ranges, sizes, and floor plans. Exclusive dealing would necessarily limit the variety of homes that dealers could offer without giving them any compensating benefits.

Related Regulations and Actions

Internal: Commission consent orders presently require four mobile home companies to establish effective warranty performance systems. We have brought other cases against mobile home companies allegedly in violation of the warranty disclosure and labeling

requirements of the Magnuson-Moss Act, § 101 *et seq.*, 15 U.S.C. § 2301 *et seq.*

External: The Department of Housing and Urban Development regulates the production of mobile homes at the factory under the National Mobile Home Construction and Safety Standards Act of 1974, Title VI, 42 U.S.C. § 5401 *et seq.*

Seventeen States require warranties in the sale of new mobile homes. A number of States license and bond mobile home dealers and manufacturers.

Active Government Collaboration

The Department of Housing and Urban Development, Small Business Administration, and representatives from eleven State attorney general offices testified at the rulemaking hearings. Other Federal and State officials submitted written comments on the proposed rule.

Timetable

Commission Consideration of Recommended Rule—Spring/Summer 1981.

Available Documents

NPRM—40 FR 23334, May 29, 1975.

Final NPRM—42 FR 26398, May 23, 1977.

Presiding Officer's Report—45 FR 53538, September 11, 1979.

Final Staff Report (including a cost-benefit analysis)—45 FR 53839, August 13, 1980.

The record of this proceeding is publicly available at the Office of Legal and Public Records Section, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, DC 20580.

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FTC

Residential Real Estate Brokerage Industry Practices

Legal Authority

Federal Trade Commission Act, § 5, 15 U.S.C. § 45.

Reason for Including This Entry

The Federal Trade Commission (FTC) has authorized a staff investigation to determine whether competition among real estate brokers may be hindered by private restrictions, thus causing consumers to pay higher than necessary

prices for brokerage services. If remedial action ultimately is taken, it could have an important effect on the relationships among consumers, brokers, and agents in real estate transactions and on competition in this critical sector of the economy.

Statement of Problem

The FTC staff estimates that in 1979 approximately 3.8 million existing homes were sold through real estate brokers. Total revenues from those 1979 sales exceeded \$215 billion, generating an estimated \$13 billion in commissions paid to over 2 million licensed brokers and agents in the country.

The FTC has received complaints from many sources within the real estate brokerage industry. Brokers and sales agents throughout the country contend that their competitive efforts have been frustrated by other brokers and groups in unfair ways.

In addition, complaint letters, petitions, and public statements from individuals and consumer groups have called attention to alleged consumer problems in the brokerage services market, including inadequate representation of the buyer's and the seller's interests.

Further, articles and studies in legal and economic publications have suggested that problems may exist in the competitive process of the industry. Economists and other observers have questioned, in particular, whether the seemingly high degree of price and service uniformity among brokers, characterized by the commonplace 6 or 7 percent commission rate, is the product of problems with the competitive process.

The FTC staff has identified five issues for particular emphasis in its study of the residential brokerage industry: (1) the nature and role of private trade associations of brokers; (2) the structure and operations of multiple listing services (systems for sharing house listings among brokers); (3) problems facing brokers who offer innovative packages of prices and services; (4) the role of the broker in the residential brokerage transactions, including issues of potentially conflicting duties and interests which may make the adequate representation of consumers difficult, and (5) the nature and role of State law and State agencies that regulate the industry.

The Commission staff has now completed its investigative fieldwork and is preparing a summary report for the Commission. The staff currently expects to complete this report in the fourth quarter of 1980. It will summarize

staff findings and recommend any appropriate FTC action.

Alternatives Under Consideration

Since the FTC staff has just completed its investigative work, neither the staff nor the Commission has reached any conclusions on any appropriate FTC action. However, the following are among the numerous alternatives under scrutiny.

The FTC staff is considering at least five major types of alternative recommendations: (A) FTC public reports containing legislative proposals to Congress or the State legislatures seeking to alter the legal standards of practice for the industry; (B) a trade regulation rule or guide; (C) FTC efforts to inform the home buying and selling public, including attempts to increase consumer understanding of the brokerage transaction and to facilitate consumer shopping efforts; (D) FTC formal administrative complaints alleging violations of the FTC act against groups or individuals in the industry; and (E) no FTC action.

One or more of these alternatives might encourage a number of substantive changes which would enhance competition and improve the flow of information to consumers. The FTC staff, in considering various policy alternatives, is seeking to insure that the marketplace will be allowed to provide the choices consumers want. The staff is giving primary consideration to actions that enhance competition by eliminating any anticompetitive private restraints on competitors, and that improve the flow of accurate information to consumers. Among the many possible provisions the staff is considering are: (1) elimination of restrictions that directly or indirectly inhibit competition among brokers on the basis of prices and services offered; (2) easing restrictions on the use of multiple listing services and other important services; (3) clarification of existing legal duties between brokers, and between brokers and consumers; and (4) facilitating informed consumer choice through requirements that brokers make brief information disclosures to consumers. The FTC could incorporate these provisions in any of the above alternative approaches.

Summary of Benefits

Sectors Affected: Licensed real estate brokers and agents, and brokerage firms; and consumers of brokerage services, both buyers and sellers.

The costs and benefits of FTC action will depend upon the final choices the Commission makes among the numerous policy alternatives currently under

consideration. Overall estimates will remain highly conjectural until the Commission determines which specific actions, if any, it will take. The staff is now carefully analyzing each alternative.

Pending a final decision on which alternative or alternatives, if any, we will follow, we can only roughly estimate the precise benefits of the above alternatives. However, if one accepts the view of some experts that the widespread 6 percent standard commission rate is not the product of healthy competition, then improving competition could produce a significant reduction in consumer settlement costs.

The above alternatives also could provide benefits in the form of: more vigorous competition among different systems of brokerage in addition to competition among different firms offering essentially the same approach; increased consumer choice among different packages of prices and services; greater consumer understanding of the brokerage process and thus more effective consumer shopping and bargaining skills; and greater efficiency in brokerage operations. Brokers and brokerage firms could benefit from reduced uncertainty over their own legal liability to consumers. In the present system, brokers face situations where they may be legally liable for incorrect statements made by other brokers, or for violations of legal duties not clearly understood by many brokers. Brokers and firms could also benefit from reduced private regulatory restraints and the resulting increased competitive freedom.

Summary of Costs

Sectors Affected: Licensed real estate brokers and agents, and brokerage firms; trade associations; and related services, such as multiple listing service.

The FTC will carefully design any action in the brokerage industry to minimize regulatory burdens and costs. For example, many of the alternatives under consideration involve the removal of private regulation of brokers' activities, rather than additional government regulation. Other alternatives, such as affirmative disclosures, should in most cases involve no more paperwork than brokers currently use, and would require disclosures currently recommended by real estate attorneys to protect brokers from liability.

The principal costs of these remedial efforts would be the one-time costs involved in redrafting forms and changing training programs.

It is possible that lower rates flowing from greater competition might reduce total revenues to the industry as a whole if there is little change in business volume. However, it is conceivable that there might be some increase in business volume resulting from the reduced rates.

The staff is analyzing all the proposals under consideration against the criterion that the positive impact on the millions of households using brokers each year must outweigh the burdens imposed. The staff is taking particular care to identify alternatives which avoid placing small businesses at a competitive disadvantage.

Related Regulations and Actions

Internal: None.

External: Other Federal agencies have a role in the brokerage industry. The Justice Department's Antitrust Division has conducted a series of investigations of brokerage practices, primarily involving alleged local brokerage conspiracies in restraint of trade. The Department of Housing and Urban Development (HUD) maintains a Real Estate Brokerage Practices Division. HUD is currently conducting a 2-year study of settlement services, including brokerage services, in light of the 1975 Real Estate Settlement Procedures Act, which requires that certain information be provided to the consumer at different stages of the home purchase/sale process.

State departments of real estate or real estate commissions have primary regulatory responsibility in this industry. The FTC staff believes this will continue to be the case. A number of the State agencies are actively engaged in reviewing and revising licensing and related regulations.

State antitrust enforcement officials are also active in the brokerage industry. State and local prosecutors in California, New Jersey, New York, Washington, and many other States have conducted investigations and brought lawsuits involving many of the practices identified for study in this investigation.

Active Government Collaboration

The FTC staff is in contact with the Justice Department and the Department of Housing and Urban Development regarding the studies and investigation underway in those agencies.

The staff has sent a "Notice of Intent to Make Recommendations and Invitation to Comment" to State and local government officials, including all the State departments of real estate, governors, attorneys general, and legislatures, and to selected local

prosecutors and State consumer agencies. The FTC will encourage State and local agencies to participate in every phase of any FTC effort in the industry.

Timetable

The timetable for any FTC action will depend upon the nature of the action selected. Currently, we expect a decision of FTC as to appropriate action—Winter 1980–81.

Available Documents

Documents available to the public include:

(1) FTC Press Release, dated December 27, 1975, describing the initiation of the original FTC brokerage investigation;

(2) FTC Press Release, dated March 31, 1978, announcing that the Los Angeles Regional Office of the FTC would coordinate the consolidated FTC brokerage investigation;

(3) "Notice of Intent to Make Recommendations and Invitation to Comment," issued in July 1979 to State and local government officials.

Copies of these documents can be obtained from the FTC Office of Public Information, Sixth and Pennsylvania Avenue, N.W., Washington, DC 20580 or from the Agency Contact listed below.

Agency Contact

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FTC

Trade Regulation Rule Concerning Credit Practices (16 CFR Part 444)

Legal Authority

Federal Trade Commission Act, §§ 5 and 18, 15 U.S.C. §§ 45 and 57(a).

Reason for Including This Entry

The Commission is conducting a rulemaking proceeding on the consumer and competitive effects of certain practices used by creditors when consumers have difficulty repaying their debts. Remedies under consideration in this proceeding could have an important effect on the relationship between creditors and consumer debtors in the United States and on competition in this sizable sector of the economy.

Statement of Problem

Most Americans use consumer credit at some time in their lives. At any given time, about half of all households in the

Nation are making payments on installment debt. Many encounter financial or other problems which cause them to become delinquent in their payments. Only rarely is such delinquency deliberate. Studies show that the leading causes are such unplanned events as unemployment, illness, and circumstances in which the consumer is overburdened with debt obligations.

When debtors default, they become subject to a variety of legal remedies that creditors use to collect money. Many creditor remedies are appropriate collection devices. Certain others, however, inflict injury on debtors that may be disproportionate to the gain to creditors. The injury includes not only dollar losses, but also nonpecuniary harm, such as emotional distress, loss of privacy, and disruption of family relationships. The disproportionate nature of the injury may mean that many consumers may be obtaining credit on terms that they would not choose in a market in which more complete information about credit terms was available.

The right of creditors to use remedies derives largely from provisions included in credit contracts. Credit contracts are standardized form documents prepared by creditors. There is generally no bargaining over terms between debtor and creditor.

The record shows that consumers frequently cannot shop for credit terms because they lack the specialized legal knowledge necessary to understand and evaluate remedy terms in contracts. Furthermore, creditors often do not compete with each other by offering more favorable remedy terms of contracts, and therefore, in a given market, consumers will find little variation in such terms. We believe that all these factors indicate market forces may not have produced a reasonable balance of creditor and debtor rights in credit contracts.

Specific contractual and other creditor remedies which may cause substantial injury to consumers and which are in widespread use include the following:

1. Confession of judgment—As part of the contract by which credit is extended, the debtor signs a form which authorizes the creditor to obtain a court judgment against him without notice to the consumer and without any opportunity for the consumer to appear and defend himself. The debtor thus loses due process rights, such as the ability to contest disputed claims.

2. Waivers of state property exemptions—The debtor waives the right, granted by State law, to keep certain minimal property if a court

judgment is obtained against him. In many States, a court will not honor the waiver; however, the rulemaking record shows that some creditors nonetheless have used this waiver to threaten debtors with loss of all their goods.

3. Wage assignments—The debtor authorizes the creditor to seize a portion of his wages without first obtaining a court judgment. The debtor loses the ability to contest disputed claims. Moreover, some debtors may be subject to disciplinary action or firing by employers who do not like to divide employee wages between a creditor and an employee because of the accounting costs this imposes.

4. Blanket security interests in household goods—These security interests give the creditor the right to take all of the debtor's household goods in the event of default. Because in many instances such goods may have little resale value, it appears that creditors may use these security interests primarily to threaten the debtor and deter default, rather than to actually secure the debt.

5. Cross-collateral security interests—These security interests allow a merchant to take all goods that a consumer has purchased from that merchant over an extended period of time, in the event of the consumer's failure to pay for a single purchase.

6. Deficiencies—Following the repossession and sale of collateral, the creditor can sue the debtor for deficiency, i.e., the difference between the sale price of the product and the amount the consumer owes. The evidence shows that the sale prices of repossessed collateral may frequently be very low, resulting in large deficiencies.

7. Attorney's fee provisions—The provisions require the debtor to pay the creditor's attorney fees. They thus may tend to inhibit debtors from defending themselves against payment of disputed debts. The evidence indicates that, in some instances, attorneys' fees assessed by courts may be larger than actual court costs or the cost of actual legal service provided.

8. Late charges—Late charges are penalty fees that the creditor assesses when the debtor fails to pay an installment on time. The rulemaking record shows that sometimes they are "pyramided," i.e., a creditor allocates payments in such a way that a single late or missed payment may result in the debtor being assessed a late fee on all subsequent installments.

9. Third party contacts—The record indicates that creditors make contacts for debt collection purposes with third parties, such as relatives, neighbors, or

the debtor's employer. Such contacts may tend to invade privacy and may harm a debtor's employment relationship and lead to job loss.

10. Cosigners—Creditors sometimes have the debtor obtain one or more cosigners who agree to pay the debt if the principal debtor defaults. The evidence shows that cosigners frequently do not understand that the obligation they undertake is substantial.

Alternatives Under Consideration

The rule that was originally proposed on April 11, 1975 (40 FR 16347) would prohibit a number of the above creditor remedies and restrict the use of others. It would prevent or limit confessions of judgment, waivers of State property exemptions, wage assignments, non-purchase money security interests in household goods, and attorneys' fee provisions. Creditors would have to promise in the contract not to make third party contacts except to locate the debtor or his property. Cross-collateral security would be permitted only if creditors released collateral from the security agreement as the consumer paid for it in the order it was purchased by the consumer. Creditors could collect deficiencies only if they credited the debtor with the fair market retail value of the collateral. Late fees would be limited. Cosigners would have to be given an information disclosure explaining their obligation and a 3-day "cooling-off" period to evaluate that obligation. Creditors would also be required to give cosigners copies of relevant documents, to notify cosigners in the event of default by the principal debtor, and to make serious efforts to collect from the principal before seeking payment from the cosigner.

Following publication of the NPRM, members of the public (including many members of the credit industry which would be affected by the rule) suggested numerous modifications, alternatives, exceptions, and deletions to the proposed rule. Based, in part, on these suggestions, the rulemaking staff, in its recently released staff report, has recommended modifications to the originally proposed rule. The most important proposed modifications concern the provisions on late fees, security interests, deficiencies, and cosigners.

The original proposal would have limited late fees to the amount derived by applying the annual percentage interest rate governing the debt to the amount which was late for the period it was late. The staff report finds insufficient evidence to support the proposed general limitation on late fees

and recommends confining the provision to a ban on "pyramiding."

The original proposal on security interests would have prohibited any security interest other than a purchase money security interest, where credit is used to purchase consumer goods. (A purchase money security interest is a security interest in goods that are purchased with the credit that is being secured.) The staff report recommends dropping the general restriction on non-purchase money security interests. Instead, it recommends a provision banning non-purchase money security interests in household goods but allowing them in other consumer goods such as automobiles. The recommended provision is intended to focus on the specific problem documented on the record.

The original proposal on deficiencies would have required that whenever a creditor repossesses collateral, the creditor must credit the debtor with the fair market retail value of the property. The revised proposal would apply a retail value standard only if the creditor wishes to collect a deficiency. Creditors would not be required to return surpluses to debtors based solely on the retail value standard. In addition, retail value would have to be determined based on an actual sale in an established retail market, either by the creditor or a third party. This would eliminate ambiguity in the determination of retail value. If no established retail market exists for the collateral, the creditor could not collect any deficiency. This is consistent with the view that deficiencies may be appropriate when high value collateral, such as automobiles, is repossessed but not when low value collateral is repossessed.

The original proposal required that creditors provide cosigners with a 3-day cooling-off period before the cosigners become obligated on a debt. The staff report recommends a cooling-off period only where a creditor solicits someone to become a cosigner after a debtor has defaulted.

Apart from the four alternatives described, the staff report recommends a variety of other, more technical changes in the proposed rule. The staff report is accompanied by a memorandum from the Director of the Bureau of Consumer Protection which does not make specific recommendations but which invites public comment on alternatives to a number of proposed rule provisions. These include: substituting a "loser pays" approach to attorneys' fees for the proposed ban on provisions that require a debtor to pay attorneys' fees, limiting

the prohibition against third party contacts to contacts with employers, and dropping proposed protections for cosigners that go beyond disclosure. In addition, the Bureau Director's memorandum suggests that the Commission may wish to consider some optimal mix of rule provisions, perhaps modeled on consumer credit laws that are already in effect in Connecticut, Iowa, and Wisconsin. These three States have laws that are similar in many respects to the proposed rule, and the rulemaking developed extensive information about how these State laws have worked in practice.

Finally, a memorandum from the Commission's Bureau of Economics concerning the recommended rule is also available to the public. The Bureau of Economics memorandum suggests alternative rule provisions in a number of areas, including elimination of the prohibition on security interests in household goods; elimination of the cross-collateralization provision of the rule; substitution of a "loser pays" approach to attorneys' fees; and modification of the deficiency balances section of the rule to permit creditors to calculate deficiencies based on either the wholesale or retail value of the collateral, as determined by an actual sale.

The Commission will consider the alternatives recommended in the staff report, as well as those raised by the Bureau Director, the Bureau of Economics, and various participants in the proceeding, and will decide what form of rule, if any, it ultimately should promulgate.

Summary of Benefits

Sectors Affected: Consumer debtors.

The primary beneficiaries of this rule would be consumers who borrow to obtain goods or services and have difficulty repaying their debts. While the rule would not prevent creditors from compelling consumers to pay legitimate debts where necessary, it seeks to limit unjustified consumer injury arising from the use of certain boilerplate collection remedies, where the benefits to creditors from such use appear to be small and the injury to consumers is substantial.

Although at the present time the Commission does not know what form of rule, if any, it will adopt, it is possible to identify the type of benefits that should result if it promulgates certain provisions of the proposed rule. For example, several provisions would produce dollar benefits for consumers by reducing excessively large deficiencies and late fees. If the final rule eliminates collection methods

which result in injury to the employment relationship, it would benefit consumers by protecting their employment security. Eliminating practices by which creditors evade due process requirements would increase the fairness with which creditors treat consumers and would improve consumer's ability to legally defend themselves when creditors demand payment even though the consumer did not get what he paid for as a result of fraud or other seller non-performance.

An important qualitative benefit of any final rule should be fairer treatment of people suffering from financial difficulties. The proposed rule attempts to rectify practices that currently result in some creditors unfairly threatening such individuals with the loss of their possessions and jobs, and harassing their friends and relatives.

Quantitative information relevant to an assessment of current injury to consumers is available for a number of provisions of the proposed rule. For example, evidence in the rulemaking record indicates that over 60,000 consumers have wage assignments filed with their employers each year. One source estimates that use or threatened use of wage assignments results in loss of employment up to 10 to 20 percent of the time, at least for low-income consumers. Next, the rulemaking record indicates that well over 10 million consumers are subject to contracts containing blanket security interests in household goods. Creditors often make implicit or explicit threats to repossess when borrowers become seriously delinquent. We estimate, based on the rulemaking record, that creditors make such threats to repossess to at least several hundred thousand borrowers each year. Finally, over 750,000 automobiles are repossessed each year. In most cases where an auto is repossessed, it is sold at less than its wholesale value and the consumer continues to owe the creditor money. Based on figures for the mid-1970s, the amount owed totals over \$400 million. The provision of the proposed rule relating to deficiency judgments, if adopted, may significantly reduce this amount.

Summary of Costs

Sectors Affected: Consumer debtors; credit agencies other than banks, particularly installment sales finance companies, and other establishments providing consumer credit; retail trade of consumer products; adjustment and collection agencies; and State governments.

The cost to consumers of any rule may potentially take two forms: increases in

the price of consumer credit (i.e., interest rates) and reductions in availability of credit to certain consumers.

The rulemaking record contains empirical economic evidence based on data in States whose credit laws contain provisions similar to one or more provisions of the proposed rule. These economic studies and other information on the record provide an imprecise estimate of the effect a rule would have on the cost of credit, but suggest that adopting the rule in the form originally proposed by the Commission would cause no more than a small increase in the interest rate on loans made by finance companies in States with no existing regulation.

For example, the primary econometric study prepared for the proceeding applied statistical techniques commonly used by economists to data on individual loans from thirty States with varying credit laws. The estimates of the effect of the rule on the price of credit varied with the method of estimation. The estimates predicted an increase in the annual-percentage rate ranging from 0.19 percentage points to 1.6 percentage points, compared to the average interest rate of 25 percent for loans in the sample. (The 0.19 percent measures the overall impact on the price of credit of demand and supply factors influencing the cost and availability of credit. The 1.6 percent, in contrast, measures only the factors influencing the supply of credit. This estimate is based on loans made at or above the legal interest rate ceiling where it is hypothesized that the demand for credit exceeds the available supply of credit.) However, these estimates should be viewed as "worst case" estimates. For example, the study measures the effect of a shift to the rule from a system where there is no regulation whatsoever. In fact, most States already restrict one or more of the creditor remedies covered by the rule, so the change created by the rule should be smaller than that measured by the study.

Testimony by State officials, some creditors, and others who have experience in States with laws similar to the proposed rule indicates that prohibitions on the covered creditors' remedies have not had significant impact on either the cost or availability of credit in those States.

However, the Commission and its staff will analyze these economic data carefully before determining if the rule should be issued or what form it should take.

The main costs of creditors' compliance with any rule should be those associated with revising contract

forms and instructional materials that they give their employees. They will have to do these tasks only once. Creditors can spread the cost over all subsequent transactions covered by the rule: costs should therefore be low on a per-transaction basis. While the rule would restrain certain creditor remedies, the evidence suggests that such restraints would not prevent creditors from collecting debts.

For example, the remedies rated as most valuable by creditors in surveys—self-help repossession (retaking of collateral without first going to court) and garnishment (creditor taking a proportion of a debtor's wages directly from the employer pursuant to a court order)—would not be affected by the rule. Moreover, the fact that most serious delinquency is unintentional should involuntary limit the economic importance of any collection remedy, and particularly of pressure devices such as household goods security and third party contacts.

The proposed rule would be likely to affect large and small creditors in similar ways. This proposal would affect finance companies more than other creditors because finance companies make greater use of the remedies covered by the rule.

The rule would not impose any requirements on State and local governments. However, several of the proposals concerning cosigners could preempt State laws on this subject.

Related Regulations and Actions

Internal: None.

External: If the Commission decides to adopt the proposed rule, the Federal Reserve Board is required by § 18 of the FTC Act to consider adopting a substantially similar rule for banks, unless the Board determines that such acts or practices of banks are not unfair or deceptive or that implementation of similar regulations would seriously conflict with essential monetary and payment systems policies of the Board. The Federal Home Loan Bank Board is also required to consider a similar rule for savings and loan institutions.

Most States have laws similar to one or more provisions of the proposed rule. A small number of States—including Connecticut, Iowa, and Wisconsin—have laws similar to most provisions of the rule, though they differ in detail.

Active Government Collaboration

Federal, State, and local government agencies participated in the rulemaking proceeding. Representatives of over half of the States testified at hearings, along with a number of local government officials. A member of the Federal

Reserve Board staff also testified. The Commission received written comments from additional government agencies including, among others, the Department of Defense, the National Credit Union Administration, and several State and local agencies.

Timetable

Post-Record Comment Period—

Currently scheduled to run through December 22, 1980.

Commission Consideration—Summer 1981.

Available Documents

NPRM—40 FR 16347, April 11, 1975.

Final Notice Concerning Proposed Trade Regulation Rule—42 FR 32259, June 24, 1977.

Report of the Presiding Officer—August 1978.

Staff Report—August 1980.

Bureau of Economics Comments on Credit Practices Rule—August 1980.

Copies of these documents can be obtained from the Office of Legal and Public Records, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, DC.

All documents on the rulemaking record, including hearing transcripts, public comments, etc., are available for examination at the same address.

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CHAPTER 7—TRANSPORTATION AND COMMUNICATION

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Design Standards for Highways— Geometric Design Standards for Resurfacing, Restoration, and Rehabilitation (RRR) of Streets and Highways Other Than Freeways (23 CFR Part 625*)

Legal Authority

Federal-Aid Highway Acts, as amended, 23 U.S.C. §§ 101, 109, 315, and 402; 49 CFR 1.48(b).

Reason for Including This Entry

The Federal Highway Administration (FHWA) believes this rule is important because of the controversy over its possible impacts on safety and because the geometric design criteria proposed in the ANPRM would substantially affect the condition of the Nation's highway system.

Statement of Problem

The 1976 and 1978 Highway Acts provided for a Federal-aid program to assist the States in resurfacing, restoration, and rehabilitation (RRR) of streets and highways. Under current procedures, RRR work must meet the standards contained in FHWA regulations for new construction. The FHWA permits exceptions on a project-by-project basis. The intent of this action is to amend existing regulations in order to establish separate RRR procedures to carry out this program.

Many highways in need of RRR work have deteriorated and do not meet today's traffic demands, or the geometric design standards that are currently required by FHWA regulations for new construction for safety features such as banking of curves, roadway and bridge width, and horizontal clearances of obstructions. Failure to provide design standards for RRR work means that the work has to meet design standards for new construction or be exempted. This practice has probably resulted in some RRR work not being accomplished in a timely manner. In light of this, FHWA is considering a

number of alternatives for implementing the RRR program.

Alternatives Under Consideration

FHWA explored major alternatives through the publication of an ANPRM on August 25, 1977. The three alternatives discussed in the ANPRM were:

(A) To continue FHWA design approval operations within the provisions of the current regulations (23 CFR Part 625) by granting exceptions to existing design standards on an individual project basis for RRR projects.

(B) To incorporate, by reference, the American Association of State Highway and Transportation Officials' (AASHTO) "Geometric Design Guide for Resurfacing, Restoration, and Rehabilitation (RRR) of Highways and Streets" as the acceptable criteria for Federal-aid RRR work.

(C) To develop, with State officials, individual RRR standards for each State by using the AASHTO "RRR Guide" and other guides.

After reviewing the ANPRM comments on all three alternatives, an FHWA task force formulated new recommendations. The task force rejected all three previous proposals, and the FHWA withdrew the ANPRM.

FHWA then recommended a new set of geometric design standards for RRR projects, which it published as an NPRM in August 1978. The NPRM elicited more than 100 comments, primarily from State and local highway agencies. The FHWA subsequently established an internal working group to review the comments it received on the NPRM and to identify and evaluate alternatives for implementing the RRR program.

Two basic policy alternatives are available to the FHWA:

(A) The FHWA would adopt design standards for use on all federally assisted, non-freeway RRR projects nationwide. Various options for implementing this alternative include: application of current design standards in 23 CFR Part 625 with exceptions granted on a case-by-case basis (i.e., essentially maintaining the status quo); application of current design standards in 23 CFR Part 625 without exception; development and application of new design standards (e.g., standards proposed by the FHWA in 1978 under Docket No. 78-10).

(B) The FHWA would adopt a flexible approach to non-freeway RRR projects without establishing nationwide standards. Options available under this alternative include: providing State highway agencies with full authority to adopt their own non-freeway RRR

design standards; issuing an FHWA policy statement for non-freeway RRR work; issuing an FHWA policy statement for non-freeway RRR work and establishing a framework for the adoption of non-freeway RRR procedures and criteria in each State that meets the intent of the FHWA policy.

The FHWA is evaluating these alternatives.

Summary of Benefits

Sectors Affected: Users of highways; State and local governments; and the general public.

The primary benefits of this program would be to prolong the life of the existing highway system and to enhance highway safety features. These highways would otherwise continue to deteriorate to the point of structural failure, requiring a much larger expenditure by Federal, State, and local governments, and ultimately taxpayers, for reconstruction. Other anticipated benefits to users of highways and the general public include: reducing costs related to vehicle operation and future highway repair; lowering energy consumption; and increasing the comfort, convenience, and safety of drivers.

Summary of Costs

Sectors Affected: Users of highways; State and local governments; the highway construction industry and its suppliers; and engineering services.

FHWA is preparing an analysis of the impact of the major alternatives. A full analysis will be available when we publish the next rulemaking action. Using estimates of the funding levels that Congress might provide, the analysis will discuss the impacts of various levels of design standards.

Related Regulations and Actions

Internal: FHWA has regulations establishing geometric design standards for highway construction projects (23 CFR Part 625).

External: None.

Active Government Collaboration

None.

Timetable

NPRM—November 30, 1980.
Public Meeting—Approximately 30 days following publication of NPRM.
Public Comment Period—90 days following publication of NPRM.

Available Documents

ANPRM—42 FR 42876, August 25, 1977, FHWA Docket 77-4.

Withdrawal of ANPRM—43 FR 2734, January 19, 1978.

NPRM—43 FR 37556, August 23, 1978.

Notice regarding status of proposed rulemaking—44 FR 29921, May 23, 1979.

Draft Regulatory Analysis of the proposed regulation.

FHWA Docket 78-10.

All documents are available for review in the Office of the Chief Counsel, Federal Highway Administration, Room 4205, 400 Seventh Street, S.W., Washington, DC 20590.

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DOT—Office of the Secretary

Special Air Traffic Rules and Airport Traffic Patterns (14 CFR Part 93*)

Legal Authority

Federal Aviation Act of 1958, as amended, 49 U.S.C. §§ 1303, 1348(a) and (c), and 1354(a); Department of Transportation Act, § 6(c), 49 U.S.C. § 1655(c); Act for the Administration of Washington National Airport, 54 Stat. 688.

Reason for Including This Entry

The Department of Transportation (DOT) thinks these proposed rules are significant due to substantial public interest, the potential costs to airlines and passengers, and the potential impact on air transportation service to some communities with service to and from Washington National Airport (DCA).

Statement of Problem

The Civil Aeronautics Board (CAB) and the Department of Justice have expressed concerns about continuing the antitrust immunity under which the airline scheduling committees currently allocate landing and takeoff reservations, or "slots," for air carriers and commuter airlines at DCA. A new method of allocation may become necessary.

Alternatives Under Consideration

The high density rule (14 CFR Part 93) defines three categories of users—scheduled air carriers, air taxis, and general aviation—for purposes of slot allocation at four airports (Washington National, John F. Kennedy International, La Guardia, and O'Hare International).

The rule also sets a maximum number of available slots for each category. A rule published on September 18, 1980 (45 FR 62406) adopted definitions as follows: air carriers—scheduled operators of aircraft with more than 56 seats; commuters—scheduled operators of aircraft with 56 or fewer seats; and general aviation—all other operators.

The alternatives for the allocation of air carrier slots that the DOT is considering are:

(A) To have air carriers compete for all available slots (one-step allocation).

(B) To divide air carrier slots into subcategories for allocation purposes (two-step allocation system). The subcategories for alternative (B) are first determined geographically by:

(1) distance of the airport served from Washington, DC;

(2) location of the airport served within geographic wedges radiating from DCA; or

(3) the size of the airport being served in terms of annual number of passengers travelling to DCA.

The available geographic slots would next be allocated to air carriers under one of the three methods below:

(A) To retain the existing scheduling committees, either as they are or with some modification.

(B) To auction the slots using a method known as the slot exchange auction, which involves simultaneous bidding for all slots that continues until all prices are stabilized.

(C) To use an administrative procedure based upon a set of weighting factors that take into account the number of slots a carrier is using, the number of passengers each carrier enplanes or deplanes at DCA, and the number of cities each carrier serves with nonstop service.

The DOT will not select a preferable alternative until we receive comments on this NPRM. The procedures being considered for air carrier slot allocation would also be proposed for commuter slot allocation.

Summary of Benefits

Sectors Affected: Scheduled air carriers; commuter airlines; and scheduled passengers, including passengers traveling to and from small communities.

The DOT expects that benefits from a two-step allocation system, which is different from the current scheduling committee system, would be to increase competition among carriers serving DCA; to make more efficient use of the airspace; and to continue and possibly improve service to Washington, DC, for travelers from small communities within

the 1,000-mile wide perimeter allows under the September 18, 1980 rule.

Summary of Costs

Sectors Affected: Air carriers; commuters; and scheduled passengers.

Without the two-step procedure, both the slot exchange auction and the administrative allocation are expected to result in increased service on high-density routes at the expense of service to smaller cities. If a slot exchange auction is initiated, passenger fares may, on the average, rise by as much as \$6 to \$24 (in 1980 dollars) depending on the airline bidding strategy. The average first-leg-out/last-leg-in fare for DCA (that is, the fare to the first stop after leaving DCA or the last stop before landing there) was \$72 in February 1980. Fares would be unaffected by the administrative procedure or the scheduling committee procedure.

The slot exchange auction may increase airline costs of service that DCA between \$49 million and \$197 million per year (in 1980 dollars) depending upon airline bidding strategy.

Related Regulations and Actions

Internal: On August 15, 1980, the Secretary of Transportation issued a Policy for the Operation of Washington National Airport. This followed publication of a Notice of Proposed Policy (45 FR 4320, January 21, 1980). The policy and implementing regulations were published in the *Federal Register* in September 18, 1980 (45 FR 62406). On October 29, 1980, DOT issued a regulation for the temporary allocation of slots at DCA for the period December 1, 1980 until April 26, 1981, because of the failure of the scheduling committee to come to agreement for that period.

External: The Air Transport Association (ATA) had petitioned the CAB for an extension of antitrust immunity granted to the Airline Scheduling Committee. In CAB Order 80-9-148, the CAB granted the ATA a one-year extension of antitrust immunity. At the same time, the CAB will investigate the need for antitrust immunity for airline scheduling committees.

Active Government Collaboration

The DOT has worked with the Civil Aeronautics Board (CAB) and the Department of Justice to develop a set of alternative allocation procedures. An initial study of slot auctions was prepared for DOT/CAB and was widely circulated for comment within the government and to the general public.

Timetable

Public Hearing—December 1980.
Public Comment Period—90 days from publication of NPRM.
Final Rule—May 1981.
Final Rule Effective—June 1981.

Available Documents

NPRM—October 27, 1980 (45 FR 71236).
Draft Regulatory Analysis—available when the NPRM is published.
"A Method for Administrative Assignment of Runway Slots," June 1980, FAA-AVP-80-5.
Econ Inc., "The Allocation of Runway Slots by Auction," Princeton, NJ, April 1980, FAA-AVP-80-3.
J. Watson Noah, Inc., "A Slot Allocation Model for High Density Airports," Falls Church, VA, August 1980.

The above documents are, or will be, available from the Agency Contact listed below.

Polynomics Research Laboratories, Inc., "Alternative Method of Allocating Slots: Performance and Evaluation." Available from the Civil Aeronautics Board.

Agency Contact

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SMALL BUSINESS ADMINISTRATION

Revision of Business Loan Policy; Business Loans and Guarantees (13 CFR 120.2(d)(4)*)

Legal Authority

The Small Business Act, 15 U.S.C. § 633(d).

Reason for Including This Entry

The Small Business Administration (SBA) has determined that these regulations are significant because they are precedent-setting—they will allow us for the first time to target media-oriented small businesses for financial assistance.

Statement of Problem

The Small Business Administration (SBA) is acutely aware of the large number of recent mergers and acquisitions in the media industries, and we are concerned that these takeovers tend to eliminate many media-oriented small businesses and promote concentration of ownership. We are also concerned that our present "opinion-

molder" policy relative to media industry eligibility may be unnecessarily inhibiting our ability to assist these small businesses, and that it may thereby indirectly promote undesirable concentration of ownership. We are therefore in the process of altering this policy, and as we have expressed in recent testimony before Congress, we favor a regulatory rather than a legislative approach to accomplishing this purpose.

Under SBA's present regulatory policy, the Agency cannot make business loans to an applicant engaged in the "creation, origination, expression, dissemination, propagation, or distribution of ideas, values, thoughts, opinions or similar intellectual property, regardless of medium, form, or content" (13 CFR 120.2(d)(4)). There are several exceptions to this prohibition regarding assistance to firms involved in printing, advertising, T.V., and certain publishing firms.

SBA originally adopted this policy in 1953 under the authority granted by § 4(d) of the Small Business Act (15 U.S.C. § 633(d)), which permits SBA to "establish general policies which shall govern the granting and denial of applications for financial assistance by the Administration."

There are three basic reasons for the policy. First, the prohibition is based upon SBA's desire to avoid any possible accusation that the government is attempting to control editorial freedom by subsidizing media or communication for political or propaganda purposes. Second, the Agency has generally sought to avoid government identification, through its business assistance programs, with concerns which might publish or produce matters of a religious or controversial nature. Third, SBA recognizes that the constitutionally protected rights of freedom of speech and press ought not be compromised either by the fear of government reprisal or by the expectation of government financial assistance.

SBA has come to the conclusion that assistance rendered under exceptions to the "opinion-molder" rule and its Small Business Investment Company and disaster programs may not be sufficient to assist the small businesses in the media industries which are demonstrably in need of increased assistance. We feel that time has come for a complete revision of our "opinion-molder" policy. We note that there has been strong sentiment in both Houses of Congress favoring a change in the policy, and we acknowledge that the present policy has produced inconsistent results in the way we have

rendered our assistance. Therefore, we have recently undertaken a legal review of the policy, and we feel that we are not legally prohibited from making regulatory changes which will allow us to make much more assistance available from SBA to media concerns.

We favor a regulatory approach to this problem because, as indicated below, we feel it will permit us to maintain the rule's valid features while allowing increased assistance to worthy elements of the media industry.

Alternatives Under Consideration

Alternative (A)—Retain the present rule, but provide a waiver procedure by which media concerns which SBA denies assistance could demonstrate that the purpose of the rule is not served by the denial of assistance.

This policy would add a "rule of reason" to SBA's current strict policy of denying assistance to all "opinion-molders" except those that qualify for specific exemptions. This proposal would give SBA administrative flexibility to allow funding of certain enterprises covered by the rule where application of the rule would serve no useful purpose (e.g., most publishers or distributors of greeting cards, sheet music, pictures, and posters; producers or distributors of musical broadcasts or recordings; specialty bookstores that do not promote a particular point of view; most neighborhood newspapers). The waiver procedure would be administered by an SBA central office committee to ensure fairness and uniformity in ruling on waiver requests.

Alternative (B)—Expand the exceptions in the current rule to allow SBA assistance to those types of businesses which meet the present broad definition of an "opinion-molder," but which do not primarily mold opinions, and the funding of which would not be likely to promote governmental interference with freedom of speech and press.

This proposal would substantially reduce the number of cases in which SBA is forced to deny assistance to concerns which technically are covered by the rule but in which no real purpose is served by denying them assistance. Unlike the waiver procedure described above, this proposal could directly exclude from the rule, for example, greeting card manufacturers and certain types of publishers. The case-by-case determinations involved in the waiver procedure are absent from this proposal.

Alternative (C)—Replace the present broad proscription against assisting "opinion-molders" with specific prohibitions against certain types of assistance to certain types of

enterprises. This proposal would reverse the structure of the current extremely broad rule by making small media concerns eligible for assistance unless otherwise prohibited from receiving it. This proposal would have the effect of widening the scope of media concerns to which SBA would provide assistance.

Alternative (D)—Prohibit SBA assistance to certain forms of media enterprises which advocate a particular religious, political, social, or economic point of view.

This proposal would narrow the "opinion-molder" rule to cover those cases where its purpose is best served. The danger of government censorship of the press is greatest where a newspaper, magazine, book publisher, or bookstore advocates a particular point of view. By refraining from assisting all such businesses (regardless of what point of view is advocated) while funding other media concerns which do not advocate a particular point of view, SBA could assist eligible media enterprises while avoiding actual or apparent government censorship of the media.

For purposes of this proposal, a daily or weekly newspaper serving a city or community would not be considered as advocating a particular point of view, even if it carried editorials as well as news stories.

Alternative (E)—Prohibit SBA assistance to an applicant if more than 30 percent of the applicant's annual gross income is derived from the sale, rental, or lease of religious products, materials, or services.

This proposal, which includes but is not limited to media concerns, would ensure that SBA's liberalization of the "opinion-molder" rule would not run afoul of the First Amendment's prohibition of governmental establishment of religion. The Supreme Court has repeatedly held that government cannot act in a manner which will have a primary effect that advances religion or which will promote excessive entanglement with religion. SBA funding of religious bookstores or broadcast stations that emphasize religious programming would advance religion and excessively involve the government in religiously oriented enterprise. The 30 percent income limitation contained in the proposal is a reasonable standard by which SBA could determine that assisting an enterprise would violate the First Amendment.

Alternative (F)—Prohibit SBA assistance to an applicant if more than 30 percent of the applicant's annual gross income is derived from the sale, rental, or lease of sexually explicit products, materials, or services.

This proposal, which includes but is not limited to media concerns, would keep SBA from funding hard-core sex industries. Such businesses (e.g., sexually explicit magazines or pornographic bookstores or theaters) are generally not in need of governmental assistance and thus SBA's finite resources could be more productively applied to other types of businesses.

Alternative (G)—Prohibit direct SBA loans to "opinion-molders."

Presently, all financial assistance, including SBA loan guarantees as well as direct loans, are denied to "opinion-molders." The dangers of government interference with freedom of speech and press is greatest where direct loans are involved. This proposal would be a reasonable accommodation between our desire to assist eligible media enterprises while minimizing the danger of actual or apparent government censorship of the media.

Summary of Benefits

Sectors Affected: All "media" small businesses, including printing, publishing and allied industries, news syndicates, television and radio broadcasting, motion pictures, and theatrical producers; and SBA.

These regulations will benefit all U.S. small media businesses because we will use them to determine which of those businesses will be eligible for SBA assistance. In addition, these revisions will benefit SBA by making its policy with respect to assistance to media concerns more specific. However, no additional funds will be available to media concerns as a result of the revisions. The revision will merely affect the targeting of appropriated funds.

Summary of Costs

Sectors Affected: None.

SBA expects no costs as this rule by itself would impose no burdens. There is a possibility that the rule could result in decreased funding to some businesses, since the rule would not generate additional funds, but redistribute current targets. However, we do not know at this time what businesses would be affected or to what degree.

Related Regulations and Actions

Internal: These regulations will apply to SBA's loan-making function. Therefore, those regulations which deal with that function, 13 CFR Parts 120 and 122, will be affected.

External: None.

Active Government Collaboration

In preparing its ANPRM, SBA contacted the Department of Justice and Office of Management and Budget to

obtain legal clearance. We do not contemplate any other government collaboration although we anticipate that comments may be forthcoming from other sectors of the executive branch, as well as from the legislative branch of government.

Timetable

Public Comment Period—October 8, 1980–December 8, 1980.
NPRM—December 8, 1980.
Public Comment Period—December 8, 1980–February 8, 1981.
Final Rule Effective—March 1, 1981.
Public Hearing—None planned.
Regulatory Analysis—None planned.

Available Documents

ANPRM—October 8, 1980.

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CIVIL AERONAUTICS BOARD

Air Carrier Insurance and Liability (14 CFR Part 205)

Legal Authority

Federal Aviation Act of 1958, § 401(q), as amended by the Airline Deregulation Act of 1978, § 22(d), P.L. 95-504, 92 Stat. 1722, 49 U.S.C. § 1371(q).

Reason for Including This Entry

The Civil Aeronautics Board (CAB) considers this rule important because it would place insurance requirements on certificated route airlines for the first time and would substantially increase the present insurance requirements for air taxi operators. The proposed rule would also meet a concern of Congress when it passed the Airline Deregulation Act of 1978: that passengers be protected during the transition to a more competitive environment.

Statement of Problem

The Civil Aeronautics Board (CAB) staff estimates that the average bodily injury/death claim award for losses suffered by passengers and non-passengers has climbed from \$55,182 in 1967 to a projected \$252,834 in 1979, an increase of 450 percent. The CAB's insurance regulations (14 CFR Parts 208 and 298), which require airlines to obtain insurance from private companies, now only apply to air taxis (operators of small aircraft), charter airlines, and domestic cargo carriers. The minimum insurance limits that the

CAB requires for these carriers range from \$75,000 per person to \$500,000 per person. However, at the present time, there are no CAB insurance requirements for CAB-certificated passenger carriers, such as the large nationwide airlines.

The Airline Deregulation Act of 1978 requires all certificated air carriers to have liability insurance coverage as established by the CAB. Unless a carrier complies with the CAB's insurance rules, it cannot obtain or retain operating authority. Although there has not been a problem with the ability of existing scheduled carriers to pay claims made against them, Congress concluded that airline deregulation would significantly reduce the barriers to entry into air transportation. This in turn could result in operations by new carriers that are less able to compensate the public for damage losses in an accident.

Changes in the liability protection rules also appear to be needed to keep pace with the steadily increasing value of losses the public suffers in aircraft accidents. The restructuring and revision of insurance rules will also meet the mandate of the Congress, in ensuring protection of the public during the transition of air transportation from a heavily regulated to a deregulated market.

Alternatives Under Consideration

Possible alternatives the CAB is considering include (A) minimum standards for insurance policies and self-insurance plans, to prohibit certain types of exclusions of liability such as for safety violations, or to require certain specific terms, such as for policy cancellation; (B) minimum limits of coverage; (C) requiring disclosure of the carrier's insurance and liability limits to shippers; (D) establishing different limits and standards for different types and sizes of air carriers; and (E) no action at all at this time.

Minimum limits of liability and minimum standards for insurance policies, alternatives (A) and (B), would set specific amounts and terms and conditions that the carriers must meet. The standards would be similar to the CAB's current insurance rules, which require insurance by licensed insurers and prohibit cancellation without notice to the CAB. These alternatives have the advantage of ensuring a minimum financial responsibility for all existing carriers, whatever their past records, and for new carriers as the historical barriers to entry are reduced. They would also go further in meeting the intent of the Airline Deregulation Act, which emphasizes that safety in air

transportation be given primary importance in the transition to deregulation.

For domestic air cargo transportation, the CAB now uses alternative (C), and requires carriers to disclose their insurance and liability limits for cargo, but does not require specific amounts for those limits. While the CAB has only used this type of approach in regulation of insurance liability for a short time, it has the advantage of allowing carriers to establish their own liability limits within the boundaries of competition and internal economic management. Its disadvantages are that it depends on a generally knowledgeable consumer, such as a shipper in cargo transportation, and may not be as effective in giving actual notice to vacation travelers and others who might not be regular users of air transportation.

Alternative (D) is important because of the wide variety in the size of airlines, the aircraft they use, and the size of their businesses. An advantage of different rules for large and small aircraft or businesses is that the rules may be structured so that the premium costs are not overwhelming. The disadvantage is that nonuniform rules may be misleading to passengers and shippers.

Alternative (E) is based on the assumption that the present standards, conditions, and applicability of the CAB's insurance requirements are adequate, and that the burden should generally be on passengers and shippers to ensure that they have necessary insurance coverage in case of an accident. An advantage is that the alternative would involve no increase in costs to airlines, other than inflation. The disadvantages are the possibility of substantial loss for some passengers because of inadequate insurance of some air carriers, and that passengers would have no way of knowing whether the airline has adequate coverage.

The CAB is proposing to use a combination of alternatives (A) through (D). The proposal includes authorized exclusions and standards for insurers, and minimum coverage of \$300,000 per passenger. The minimum for passenger liability per accident would be \$300,000 x 75 percent of the number of seats. For liability to nonpassengers, the proposal amounts are \$300,000 per person and \$20,000,000 per occurrence (\$2,000,000 for small aircraft). The proposal would also require disclosure of an air cargo carrier's insurance and liability limits to shippers. This combination of alternatives would allow the Agency to tailor insurance regulations to the needs of each group of shippers and

passengers and to the ability of carriers to afford needed coverage.

Summary of Benefits

Sectors Affected: Air cargo carriers; air travellers; and shippers using air transportation.

Both air passengers and air shippers can be expected to benefit from the proposed insurance requirements because they would be better able to recover money damages in the event of an accident or damage to property. Cargo air carriers would benefit by being able to set their own insurance levels and liability limits to meet market demand, thus ensuring they will be at the most efficient amounts.

Summary of Costs

Sectors Affected: The air transportation industry, including certificated air passenger carriers, charter air carriers, air taxis, and air cargo carriers; the insurance industry; air travellers and shippers; and the CAB.

Although the CAB has not previously required certificated route carriers to maintain insurance, most already have coverage in amounts equal to or greater than the limits being considered. All but one of the charter airlines also have such coverage. Some air taxi operators may have to increase their insurance coverage to meet the proposal, and new carriers would, of course, have to obtain coverage meeting these standards. Air cargo carriers would have the cost of giving notice to their customers of the insurance carried. The CAB staff estimates that the increased annual cost to the air taxis for new passenger liability coverage may be approximately \$200 (1979 dollars) per seat, and the increase in cost for public liability coverage (insurance for liability to people other than passengers) may be approximately \$200 to \$4,000 (1979 dollars) per plane, depending on the size of the plane. These costs would likely be passed on to passengers and shippers as increases in prices.

The insurance industry would have some costs in rewriting present policies and obtaining reinsurance to meet the new coverages and conditions.

Operators of small aircraft would have somewhat smaller costs for the proposed third-party liability coverage, since the per-occurrence limit set for those aircraft would be \$2,000,000 rather than \$20,000,000.

Related Regulations and Actions

Internal: Insurance requirements for special classes of air carriers: Indirect Cargo Carriers—14 CFR Part 296; Air Taxis—14 CFR Part 298; Domestic Cargo

Carriers—14 CFR Part 291; and Charter Carriers—14 CFR Part 208.

External: The CAB staff is researching related actions by other agencies.

Active Government Collaboration

CAB staff held discussions with the Federal Aviation Administration, whose experience with accident litigation and insurance problems is helpful to the CAB in formulating a proposed rule, and with the Military Traffic Management Command for information about insurance of air carriers carrying civilians for the Department of Defense.

Timetable

Final Rule—Winter 1980–1981.

Final Rule Effective—Winter 1980–1981.

Public Hearings—None.

Regulatory Analysis—The CAB, as an independent agency, is not required to prepare a Regulatory Analysis as it is defined under E.O. 12044.

However, the CAB prepares essentially the same information in its NPRMs and final rules.

Available Documents

NPRM—45 FR 7566, February 4, 1980 (EDR-395).

Extension of comment period—45 FR 14062, March 4, 1980 (EDR-395A).

(Note.—Numbers in parentheses are CAB reference numbers for these documents.)

Civil Aeronautics Board Dockets 37531 and 37532.

Public comments may be examined in Room 7111, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, DC.

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CAB

Essential Air Service Subsidy Guidelines (14 CFR Part 271)

Legal Authority

Federal Aviation Act of 1958, § 419(d), as amended by the Airline Deregulation Act of 1978, P.L. 95-504, 92 Stat. 1739, 49 U.S.C. § 1389(d).

Reason for Including This Entry

The Civil Aeronautics Board (CAB) considers this rule important because it should significantly reduce the Federal subsidy of airlines. It also represents a major shift in focus of the subsidy program. Rather than subsidizing certificated airlines to aid in their economic viability and expansion, the new subsidy program will focus on smaller commuter airlines in order to improve air service to small communities.

Statement of Problem

The primary thrust of the Airline Deregulation Act of 1978 is to let the level, quality, and price of air transportation be determined by free competition of airlines seeking to meet consumer demand, instead of by pervasive government regulation. However, to minimize the potential disruption caused by airlines' increased freedom to reduce or eliminate service in particular markets, the Deregulation Act also established a program to preserve essential air service to small communities that cannot support profitable air service, using Federal subsidy when necessary. The CAB is responsible for determining the level of essential air transportation at each eligible point and ensuring that such service is provided. "Eligible points" basically are those to which any certificated airline was authorized to provide service on October 24, 1978 (555 points), plus certain other points that the CAB may designate. "Essential air transportation" is a level of air transportation that the CAB, according to statutory criteria, finds will satisfy the community's needs for air transportation to one or more principal destinations, and will ensure the community's access to the nation's air transportation system.

The Federal Aviation Act has long contained a subsidy provision—§ 406. Although the CAB has built incentives into that subsidy system, § 406 has not always been effective as a tool to prevent the withdrawal of airlines from small communities. One reason is that § 406 is limited to certificated airlines, which typically use large aircraft. Also, the CAB must consider the needs of the certificated airline's overall system, and not only the points affected, when determining the airline's subsidy need.

This subsidy provision had not been significantly modified since the adoption of the Civil Aeronautics Act in 1938. Its primary intent was the development of a national air transportation system, rather than ensuring air service to small communities. That is why the CAB was

to consider the financial need of the airline's entire system in establishing subsidy rates. This approach enabled airlines to expand and acquire larger aircraft. While this worked well in building the air transportation system and nurturing airlines to self-sufficiency, the shift to larger equipment made high-frequency service to smaller points increasingly impractical. Because the § 406 subsidy was limited to certificated airlines, the CAB was unable to subsidize the air taxi industry, whose equipment was better suited to serving the small points.

The essential air service subsidy program of § 419, which was added to the Federal Aviation Act by the Airline Deregulation Act of 1978, corrects this problem. This rulemaking to establish subsidy guidelines responds to § 419(d), which states:

The Board shall, by rule, establish guidelines to be used by the Board in computing the fair and reasonable amount of compensation required to insure the continuation of essential air transportation to any eligible point. Such guidelines shall include expense elements based upon representative costs of air carriers providing scheduled air transportation of persons, property, and mail, using aircraft of the type determined by the Board to be appropriate for providing essential air transportation to the eligible point.

During Fiscal Year 1979, the CAB began work on deciding whether subsidy is needed for essential service to 27 points. During Fiscal Year 1980, the CAB expects to provide subsidy support for 24 points, and during Fiscal Year 1981, 51 points. Those points are smaller communities where air service cannot be provided at a profit.

Alternatives Under Consideration

The Airline Deregulation Act does not point the CAB toward any particular subsidy approach. On the contrary, Congress expects the CAB to develop new and innovative subsidy methods. The primary emphasis is on ensuring essential services, rather than on minimizing the costs of the program; that is, the subsidy program must be structured so as not to hinder, in any way, the provision of essential services. But of course, the CAB must be prudent with Federal expenditures, so it is faced with the dual and conflicting objectives of keeping subsidy at a reasonable level without interfering with the provisions of essential air services.

Developing a market for air service to small communities is a step common to achieving both goals. Specifically, increased traffic volumes can at once

justify better service (more flights) and reduced subsidy cost. The CAB is considering three alternatives for achieving these goals. One alternative is cost-plus subsidy, under which the CAB reimburses airlines for their expected losses, allows them a reasonable profit, and, in addition, compensates them for any additional losses that they incur in actually providing the service. This approach does not appear to promote either goal.

Instead, the CAB favors two innovative incentive approaches. Under one, the fixed incentive rate, the CAB would reimburse the airline for a predetermined projected loss, and would allow a reasonable profit. If the airline incurred additional losses, it would not receive additional compensation. If the airline received additional revenue, however, it could keep the extra profit. The possibility of making large profits with subsidy gives airlines the incentive to be cost efficient and develop the market. The possibility of uncompensated losses, however, poses the danger of service terminations. To avoid this problem, the CAB is also considering a third approach, the shared incentive rate. Under this approach, as with the others, the CAB would reimburse the airline for a predetermined project loss and allow a reasonable profit. The difference is that under the shared rate, the CAB would compensate the airline for some of its additional losses instead of all of them (cost-plus approach) or none of them (fixed incentive rate approach). These three alternatives will be discussed in the NPRM.

Summary of Benefits

Sectors Affected: Small communities; air travelers and potential travelers to these communities; industries within small communities; the air transportation industry, particularly small, commuter airlines; the general public; and CAB.

The benefits from the subsidy program are the avoidance of severe economic dislocation and the continuation of essential air service to communities that would otherwise lose that service as a result of airline deregulation. In some subsidy cases, the combination of deregulation and subsidy will result in more flights and cheaper or more available air service. Small commuter airlines are more likely to take advantage of the subsidy program because it is oriented towards cities where jet service is inefficient. This may lead to other tangible benefits to the communities, such as the attraction of new industry or business, and intangible benefits, such as an

improved way of life stemming from better and continued access to the nation's air transportation system.

The subsidy guideline rule, as opposed to the subsidy program itself, should also provide several benefits. It would simplify the procedures for computing subsidy amounts, thus saving administrative time for the CAB and airlines. It could also result in improved services and lower subsidy costs if it uses an incentive approach. Although the effect on individual taxpayers of the choice of guidelines will be slight in any event, the incentive plan should minimize subsidy compensation and save taxpayers in the aggregate several million dollars annually, when compared with other approaches to subsidy.

The Congressional Budget Office estimated that when this new system is phased in and the old subsidy system phased out (in 1986), there will be a savings of 26 million subsidy dollars per year. The subsidy program and guidelines are not predicated on a cost/benefit analysis by the Agency, but are required by law.

Summary of Costs

Sectors Affected: None.

The cost to the government of the underlying subsidy program for Fiscal Year 1979 was \$1.2 million. The CAB staff's preliminary estimates of the costs are \$9.4 million for Fiscal 1980, and \$20.2 million for 1981. The program is still in an early stage, and these estimates could prove to be understated, particularly if the defined level of "essential air transportation" is raised. A regulation establishing subsidy guidelines, as opposed to the subsidy program itself, is not likely to impose any significant costs.

Related Regulations and Actions

Internal: The CAB has adopted the following new regulations: Criteria for Designating Additional Eligible Points—14 CFR Part 270. Terminations, Suspensions, and Reductions of Service—14 CFR Part 323. Procedures for Compensating Air Carriers for Losses—14 CFR Part 324. Guidelines for Individual Determinations of Essential Air Transportation—14 CFR Part 398.

External: The CAB is a party to an interagency cooperative agreement, described below.

Active Government Collaboration

The CAB is a party to an interagency cooperative agreement for the purpose of fostering optimum air service to small communities through coordinated financial assistance. The agreement is titled "Small Community Air

Transportation Memorandum of Cooperation." Other parties to it are: the Economic Development Administration (Department of Commerce), the Federal Aviation Administration (Department of Transportation), the Farmers Home Administration (Department of Agriculture), and the Small Business Administration.

Timetable

NPRM—Winter 1980-1981.

Public Comment Period—To be announced in NPRM.

Public Hearing—None.

Final Rule—Fall 1981.

Final Rule Effective—Fall 1981.

Regulatory Analysis—The CAB, as an independent agency, is not required to prepare a Regulatory Analysis as it is defined under E.O. 12044. However, the CAB prepares essentially the same information in its NPRMs and final rules.

Available Documents

The documents listed below can be viewed at Docket Section, Room 714, 1825 Connecticut Avenue, N.W., Washington, D.C.

Final rule adopting Part 270: 44 FR 76767, December 28, 1979 (ER-1166).

Final rule adopting Part 323: 44 FR 20635, April 6, 1979 (PR-200).

Final rule adopting Part 324: 44 FR 42171, July 19, 1979 (PR-209).

Final rule adopting Part 398: 44 FR 52646, September 7, 1979 (PS-87).

Note.—Numbers in parentheses are CAB reference numbers for these documents.

Agency Contact

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CAB

Notice to Passengers of Conditions of Carriage (Proposed 14 CFR Part 255)

Legal Authority

Federal Aviation Act of 1958, as amended, §§ 403, 404, and 411, 49 U.S.C. §§ 1373, 1374, and 1381.

Reason for Including This Entry

The Civil Aeronautics Board (CAB) considers this rule important because it should greatly benefit a large portion of the public by increasing passengers' ability to understand their agreements with the airlines, and to make informed choices about what airlines to fly and what services to buy. It should also help airlines to prepare for the later stages of

deregulation, when they will have to make contracts directly with passengers, rather than through tariffs filed with the CAB.

Statement of Problem

Contracts between airlines and their passengers are very complicated. The airlines write thousands of contract provisions in technical legal language and publish them in tariffs, which are documents that airlines file with the Civil Aeronautics Board (CAB). These documents contain crucial information about the rights passengers do or do not have when they encounter air travel problems like mishandled baggage, delayed or canceled flights, oversold flights (bumping), lost tickets, or fare misunderstandings. Unlike the practice with most contracts, airlines do not give air travelers a copy of the tariffs to take home and read. The CAB requires airlines to inform passengers about a few basic subjects by using airline ticket notices and ticket counter signs written by the CAB (14 CFR 221.173-221.176). But even these notices have been technical and hard to understand, and to read most of the terms of their contracts, passengers must visit the Tariffs Section at the CAB or an airline ticket office where tariffs are kept open for public inspection. It is hard for the average passenger to locate and understand important information in the tariffs, and most airline passengers don't find out about many important limitations on their rights until after they have a serious problem and register a claim with the airline. But because of the legal doctrine of "constructive notice," under which passengers are assumed to know what is in the tariffs, passengers are usually bound by the contents of tariff rules, whether or not they are aware of them when they agree to buy their tickets.

Alternatives Under Consideration

The CAB has issued an NPRM (45 FR 42629, June 25, 1980) proposing a simpler, more direct way than tariffs for informing passengers of their contract terms. The proposed rule states that airlines may not use the tariff system to put terms in the contract without giving passengers a direct opportunity to read and know of them. The courts would review the adequacy of the airlines' notification efforts, as they do in unregulated industries. The NPRM requests comments on alternative ways to notify passengers. One alternative under consideration would entail increased amounts of CAB involvement in specifying "plain-English" standards for the contract documents prepared by airlines, or in reviewing the clearness

and completeness of documents. More detailed regulation, such as specifying subject matter, readability, form, distribution, and type size of notices, has the disadvantages of restricting airline management decisions and not necessarily using the most effective and least costly method.

Summary of Benefits

Sectors Affected: Air travelers (over 250 million passengers yearly); the air transportation industry; and travel agents.

Passengers would have more reasonable expectations of just what is included in their air fares, and would be able to take precautions to avoid many types of air travel problems or minimize the consequences when problems do arise. They would also be able to make more informed choices among competing airlines, since they would have a clearer understanding of the differences in the services offered. Airlines would also receive some benefits, since they would gain valuable experience for the later phases of deregulation, when they will no longer have the protection of a government-regulated tariff system and the concomitant doctrine of constructive notice. Similarly, travel agents would be better able to serve their customers, since they could more easily determine the differences between different airlines' service offerings.

Summary of Costs

Sectors Affected: The air transportation industry; and air travelers.

There would be one-time airline costs to develop "plain-English" contract documents, as well as printing and distribution costs to make the documents available to passengers. Under airline deregulation when tariffs are eliminated for domestic air transportation in 1983, however, airlines will eventually face this problem and these costs in some form anyway. The effect of the CAB regulation would not be to add significantly to costs in the long run, but instead to assist the industry in developing the most cost-effective means of making passengers aware of the terms and conditions of their travel.

Related Regulations and Actions

Internal: 1. The CAB issued an NPRM to simplify the notices that it already requires airlines to give passengers (45 FR 25817, April 16, 1980); CAB reference number for this document is EDR-396.

2. The CAB issued an NPRM to require that airlines give actual notice to passengers about the terms of the

contract of carriage. Under the proposed rule, tariff filings would no longer automatically be part of the passenger/airline contract [45 FR 42629, June 25, 1980]; CAB reference number for this document is EDR-404.

3. "Exemption of U.S. and Foreign Air Carriers from Tariff Observance Requirements to Permit Resolution of Consumer Complaints," Order 78-12-49, Docket 34189.

4. "Air Carrier Rules Governing Failure to Operate on Schedule or Failure to Carry," Order 79-4-115, 79-9-129, 79-11-23, and 80-3-10, Docket 35361.

5. "Air Carrier Rules Governing the Application of Tariffs," Order 79-2-106, 79-12-98, and Order 80-4-51, Docket 34772.

6. 14 CFR Part 221, "Tariffs."

7. 14 CFR Part 250, "Oversales."

External: None.

Active Government Collaboration

None.

Timetable

Public Hearings—None.

Final Rule—Winter 1980-81.

Final Rule Effective—Winter 1980-81.

Regulatory Analysis—The CAB, as an independent agency, is not required to prepare a Regulatory Analysis as it is defined under Executive Order 12044. However, the CAB prepares essentially the same information in its NPRMs and final rules.

Available documents

The orders listed under Related Regulations and Actions can be obtained from the Distribution Section, Civil Aeronautics Board, Washington, DC 20428. (202) 673-5432.

NPRM—45 FR 42629, June 25, 1980 (EDR-404).

Extension of Comment Period—45 FR 52820, August 5, 1980 (EDR-404A).

Public comments available in Docket 38348.

(Note—Numbers in parentheses are CAB reference numbers for these documents.)

Agency Contact

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Bureau of Consumer Protection
Civil Aeronautics Board
Washington, DC 20428
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FEDERAL COMMUNICATIONS COMMISSION

Children's Television Programming and Advertising Practices (Docket 19142)

Legal Authority

The Communications Act of 1934, as amended, 47 U.S.C. §§ 307, 308, and 403.

Reason for Including This Entry

The Federal Communications Commission (FCC) thinks that these proposed regulations are of significant public interest because of the large volume of citizen mail received about children's television programming and practices. This proposed rulemaking puts out for comment the options we think may be available for changing children's television programming practices, if change is appropriate.

Statement of Problem

On January 26, 1971, at the request of a public interest group, Action for Children's Television (ACT), the FCC issued a Notice of Inquiry into children's programming and advertising practices, calling for comments on ACT's proposal that the Commission adopt certain guidelines for television programming for children. As a result of this inquiry, the FCC issued a Children's Television Report and Policy Statement in October 1974 stating that it expected television licensees to make meaningful efforts to voluntarily regulate themselves in several areas:

- to air programming specifically designed for children;
- to air a reasonable amount of programming (no less than 14 hours per week) designed to educate and inform and not merely to entertain;
- to provide programming for specific age groups; and
- to improve scheduling practices by providing programming in each of the age groups specified below and during the time periods specified:
 - (i) ages 2-5, 7 a.m. to 6 p.m. daily and weekends;
 - (ii) ages 6-9, 4 p.m. to 8 p.m. daily and 8 a.m. to 8 p.m. weekends;
 - (iii) ages 10-12, 5 p.m. to 9 p.m. daily and 9 a.m. to 9 p.m. weekends.

The FCC also set forth specific advertising guidelines regarding too many commercials, separation of program matters from commercial matters, host selling (use of a program host or other program personality to promote products), and tie-ins (promotion of products during a program in such a way that it constitutes advertising). In 1978, the Commission reopened its inquiry and issued a

Second Notice of Inquiry seeking information to evaluate the effectiveness of its 1974 guidelines and to assess possible alternatives to these guidelines. As a result of the Commission's findings, the FCC issued a Children's Television Task Force Report in December 1979, concluding that industry self-regulation during this period had not been effective in fully meeting the programming guidelines set forth in the 1974 Children's Television Report and Policy Statement. Because the industry had not regulated itself enough in the programming area, the Commission issued an NPRM asking for comments on a number of options for rules to be applied to the broadcast industry. Comments were due on June 2, 1980, and the FCC is now considering them.

Alternatives Under Consideration

In considering whether (and to what extent) the FCC needs to regulate children's television programming, the FCC is considering the following alternatives:

(A) repealing the existing Policy Statement;

(B) maintaining or modifying the Policy Statement in accordance with comments received;

(C) adopting interim programming rules requiring a minimum amount of educational programming for preschool and school-age children (the Task Force report recommended 2½ hours per week of educational and instructional programming for school-age children and 5 hours per week for preschool children). If these rules are adopted, it would require broadcasters to provide programming for children, and there is evidence that broadcasters are producing a great deal less programming than is desired. It would require that the programming be aimed at specific age groups. In contrast, the broadcasters feel that they would have to spend money on programming that would not be profitable. In addition, the broadcasters feel there is a lot of children's programming already being aired on public television and independent stations, and the proposed rule would result in a duplicative effort;

(D) adopting similar requirements as license-renewal processing guidelines. If these requirements are adopted, the FCC would have more flexibility to deal with broadcasters at license renewal time who do not comply with the guidelines. If the requirement is mandatory, the broadcaster has to comply; and/or

(E) encouraging competition among broadcasters by increasing the number of cable systems, subscription television, and other types of pay

television. If this is adopted, it would increase the number of sources of programming to provide diversity, and more programming would be provided to small audiences and children's programming without Commission action.

Summary of Benefits

Sectors Affected: Children nationwide and their families; cablevision services, subscription or closed circuit television, and other types of pay television.

If adopted, these proposed rules could improve the amount of educational television programming (7½ hours per week on weekdays where on some channels none exists), and decrease the number of commercials which children watch; and by deregulating this industry as proposed, improve competition among broadcasters throughout the pay television industry. Presently, children watch television on an average of 33½ hours per week for preschool age and 29 hours per week for school age.

Summary of Costs

Sectors Affected: The entire television broadcasting industry, including networks, stations, and production and programming activities; and the advertising industry.

Eight percent of programming by network affiliates and 11 percent of programming by independent stations was devoted to children in 1978.

The FCC will review public comments on the question of potential costs of this proposal, and cannot make any express findings of these costs until final review has taken place.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

Report and Order—December 31, 1980.

Regulatory Analysis: The FCC, as an independent agency, is not required to prepare a Regulatory Analysis as it is defined under E.O. 12044.

However, the FCC does an extensive analysis of the economic effects of regulation.

Available Documents

"Television Programming for Children." A Report of the Children's Television Task Force, October 1979.

The Notice of Inquiry/Notice of Proposed Rulemaking of January 9, 1980 is available on request from the FCC's Office of Public Affairs, Washington, DC

20554. The comments from the public are also available for review (the public was invited to an FCC panel discussion on October 15-16, 1980). Request Docket 19142.

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FCC

Creation of "New" Personal Radio Service (PR Docket 79-140)

Legal Authority

The Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 403.

Reason for Including This Entry

The Federal Communications Commission (FCC) thinks this rulemaking is important because it would make a new radio service available to the public at large.

Statement of Problem

For over 30 years, the Federal Communications Commission has recognized the need for, and the value of, personal radio communications. The largest personal radio service is the Citizens Band (CB) Radio Service, in which the FCC has licensed more than 14 million people. Other personal radio services include the General Mobile Radio Service, which offers the general public very high quality communications, but at considerable equipment cost, and the Radio Control Radio Service, which licenses people to operate model boats, cars, and airplanes by radio control. The CB Radio Service meets many personal and business needs, but there are continuing complaints by CB users about channel congestion and interference.

The FCC is now exploring several issues:

(1) to what extent the public views the limitations of the three personal radio services as problems (the limitations include the complaints discussed above, as well as any other problems brought to our attention during the comment period);

(2) whether creation of a new personal radio service in a different frequency range would solve any problems;

(3) what the demand would be for a new personal radio service; and

(4) what features the public would like to see incorporated in a new personal radio service.

Alternatives Under Consideration

The FCC is considering whether to establish a new personal radio service in the 900 Megahertz (MHz) band. The major alternative under consideration is for the FCC to decline to create a new personal radio service. If the decision is made to establish the new service, there will be a series of secondary issues that will have to be resolved. For example, the FCC will decide whether equipment to be used in this new service should be designed so that it automatically identifies the station, and whether to allow interconnection with the public telephone system. A new service would allow the public to better satisfy their personal communication needs. In comparison to CB, a new service would provide for better emergency highway and information communications, better communications between known parties (car to home or work, etc.), and could be more aesthetically pleasing to use. Eventually, the new service could also be as entertaining to listen to as CB is today. For these reasons, our demand estimates indicate that a new service would attract many new people into personal radio (perhaps an additional 1 to 10 million people, depending on the service) who would never become users of CB radio. In addition, a new service would better provide for the needs of many CBers (1 to 10 million users). It may also help to stimulate development of technology that can be used for other services. If a new service is not created, the 1 to 5 MHz needed for the service could be available for other kinds of uses. The 900 MHz band could continue to be reserved for land mobile services. However, the demand for these frequencies is projected to be relatively light during the next decade in most areas. In addition, if the service is not created, the interference situation would improve over the next decade as better CB equipment replaces older equipment. The amount of interference to television could be reduced to one-seventh of the present level by the early 1990's. If a new service is created, the interference situation may or may not improve as much, depending on the frequency band selected for the service.

Summary of Benefits

Sectors Affected: Manufacturing, wholesale, and retail trade of two-way radio transmitting, signaling, and detection equipment and apparatus; all potential personal two-way radio users; and all owners of home entertainment equipment (such as stereos, televisions, etc.).

Some members of the public have suggested that the benefits of a new

personal radio service at 900 MHz would include better quality communications than those available in the CB Radio Service; less potential than the CB Radio Service for causing television interference; and the possibility to incorporate special features (such as channels devoted to special uses) in the new service. A new service could reduce congestion in the CB radio service and offer a higher quality radio service than the present day CB service offers.

The FCC is also interested in knowing through public comment whether this new service will affect other sectors.

Summary of Costs

Sectors Affected: Radio services desiring the 900 MHz spectrum for their communications systems (broadcasting, private land mobile, and common carriers); and FCC.

The 900 MHz equipment costs more because it uses an advanced state of the art technology and, at least initially, demand would be less for the 900 MHz equipment.

The FCC has requested the public to comment on the issue of possible costs. For example, the FCC expressly asked for comments on whether the technical standards for the radios in the new service should be set so as to minimize the costs of the radio.

Because the issue of costs is open for public comment, the FCC has not taken a position on many of the questions related to potential costs. However, the automatic transmitter identification system would help to lower enforcement costs, but there would be substantial administrative costs to the FCC (potentially \$1 million to \$4 million).

The FCC is interested in knowing whether this service will affect other sectors.

Related Regulations and Actions

Internal: The Commission recently terminated the proceeding in Docket 19759 (the proposal to create a new personal radio service in 220 MHz Band). The public comments filed in this proceeding were inconclusive. The FCC concluded that a "fresh start" was necessary on the creation of a new Personal Radio Service, and, therefore, that it would start a new rulemaking proceeding to request public comment.

In addition to the actions noted above, the Commission is also investigating the feasibility of allocating some SSB-only single sideband channels to the CB Service. The role of SSB in the CB Service is one of the unresolved issues in Docket 20120, and, in view of the very widespread interest in this issue, the

staff is researching the ramifications of an allocation of frequencies above 27.410 MHz. The reduced occupied bandwidth, the slight frequency offset, and the time varying characteristics of an SSB signal may well result in substantially reduced intermodulation product generation than occurs with the mixing of two AM signals. We expect to resolve this issue in the near future and take appropriate action based on our findings. The current proceeding will not be able, nor is it intended, to be the forum through which the SSB issue is resolved. We would, however, urge respondents who have unmet communications needs at 27 MHz to consider which, if any, of those needs might be met at 900 MHz, and to determine what impact a 900 MHz service will have on their overall communications needs.

External: None.

Active Government Collaboration

None.

Timetable

NPRM—Early 1981.

Regulatory Analysis:—The FCC, as an independent agency, is not required to prepare a Regulatory Analysis as it is defined under E.O. 12044.

However, the FCC does an extensive analysis of the economic effects of regulation.

Available Documents

The Notice of Inquiry (June 7, 1979) is available on request from the FCC's Office of Public Affairs, Washington, DC 20554. For review of public comments, request PR Docket 79-140.

Agency Contact

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FCC

Deregulation of Competitive Domestic Telecommunications Market (Common Carrier Docket 79-252) (47 CFR 61.38*)

Legal Authority

The Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i), 4(j), 201, 202, 203, 204, 205, 214, and 403; The Administrative Procedure Act, 5 U.S.C. § 553.

Reasons for Including This Entry

The Federal Communications Commission (FCC) is attempting to

change the traditional approach to regulating common carriers to one where the Commission would exercise only that amount of regulation that is necessary, given the size and amount of competition faced by the particular common carrier.

Statement of Problem

The telecommunications industry provides telephone, telegraph, and similar "common carrier" services. As a result of technological and regulatory developments in recent years, the telecommunications industry has evolved from one dominated by a few large entities to one where there is now some competition for the provision of some communications services.

The rules the FCC originally adopted to regulate a monopoly telecommunications market may now result in unnecessary regulatory burdens on smaller, competitive carriers. We have attempted to address this problem.

Alternatives Under Consideration

In considering whether (and to what extent) the FCC needs to continue to regulate extensively in the common carrier field, we have adopted a number of alternatives:

(A) Allow smaller ("nondominant") carriers to file tariffs (prices, terms, and conditions of service) without requiring them to file underlying cost support data. (The current rules require them to do so.)

(B) Assume that rates contained in the tariff filings of nondominant carriers are lawful.

(C) Relax the rules that now restrict the addition of new circuits or the discontinuation of service by nondominant carriers.

(D) Use a market power test, an element of which is control over bottleneck facilities, to determine which carriers are dominant or nondominant.

The FCC is also considering further deregulatory options, such as not regulating the nondominant carriers at all. The FCC has not made a specific proposal, but has set forth the issues for public comment.

Summary of Benefits

Sectors Affected: The telecommunications industry, particularly nondominant carriers; telecommunications users; and the FCC.

This proposal would allow the staff to concentrate its resources on regulating those carriers with substantial market power, particularly AT&T.

In proposing this deregulation, the

FCC speculates that the proposal could save smaller carriers (approximately 27) the costs of complying with FCC regulation and reduce entry barriers associated with the regulations. This savings in turn could be passed on to the consumer. The proposal could also save the FCC the costs of implementing and enforcing the rules.

Summary of Costs

Sectors Affected: The telecommunications industry; domestic telecommunications users; and the FCC.

The FCC is reviewing public comments on the Inquiry/Proposal. For this reason, the FCC has not yet made any express findings of the costs of this proposal.

Related Regulations and Actions

Internal: The FCC found that the public interest would be served by allowing all interstate telecommunications services, including message telephone service (MTS) and wide area telephone service (WATS) and their functional equivalents, to be provided competitively. (FCC Docket 78-72, MTS-WATS Market Structure Inquiry.)

External: None.

Active Government Collaboration

None.

Timetable

Memorandum Opinion and Order—Fall 1980.

Regulatory Analysis: The FCC, as an independent agency, is not required to prepare a Regulatory Analysis as it is defined under E.O. 12044. However, the FCC does an extensive analysis of the economic effects of regulation.

Available Documents

The Notice of Inquiry/NPRM of September 27, 1979, is available on request from the FCC's Office of Public Affairs, Washington, DC 20554. Request FCC Docket 79-252. MTS-WATS Market Structure Inquiry (FCC Docket 78-72).

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FCC

Notice of Inquiry/Notice of Proposed Rulemaking in the Matter of Radio Deregulation (Broadcast Docket 79-219) (47 CFR Parts 73 and 0)

Legal Authority

The Communications Act of 1934, as amended, 47 U.S.C. §§ 1, 154(i), 154(j), 303(g), 303(r) and 403.

Reason for Including This Entry

The Federal Communications Commission (FCC) thinks this proposed rule is important because it proposes a major change in the traditional FCC emphasis on detailed regulation of the broadcast industry. The proposed rules would better reflect structural changes in the radio industry which have occurred over the past two decades.

Statement of Problem

The FCC is reviewing some of its regulations governing commercial radio broadcast stations. In particular, the FCC is reviewing four groups of regulations which may no longer be needed in today's radio market.

In the 1930s and 1940s, when the FCC first began to regulate radio broadcasting, the radio marketplace was very different than it is today. There were many fewer stations, for example, and television was not the dominant medium it is now.

The FCC is exploring whether the regulatory assumptions it made in the 1930s and 1940s are still valid. In particular, the Inquiry/Proposal focused on whether current radio regulations are the most effective and least costly way to achieve such goals as:

- (1) adequate informational (nonentertainment) programming;
- (2) reasonable limits on the number of commercial minutes each hour;
- (3) consideration by the radio broadcaster of community needs and interests; and
- (4) retention by the broadcaster of adequate records of nonentertainment programming and commercial time ("program logs").

Current FCC regulations accomplish these goals in a variety of ways. In the area of nonentertainment programming, FCC rules specify that the amount of nonentertainment programming must be at least a minimum percentage of a station's total programming. For AM stations, FCC rules specify that for an application to be routinely processed, nonentertainment programming must be at least 8 percent of total programming. For FM stations, FCC rules specify 6 percent of total programming. If a radio station is applying for renewal of its

license and proposes to program less than 8 percent (or 6 percent, as appropriate) nonentertainment programming, the FCC's Broadcast Bureau staff cannot routinely grant the renewal until the application is considered by the full Commission.

In the area of commercial limits, FCC rules now set commercial limits (18 to 20 minutes per hour, plus additional time during political campaigns) that, if a radio station renewal applicant exceeds them, can prevent routine granting of an application by the Broadcast Bureau under its delegated authority.

FCC policies also now require a radio broadcaster to consider the community's needs and interests when planning a station's programming. The FCC adopted a detailed primer setting out procedures for determining the composition of the area to be served, consulting with community leaders and members of the general public, enumerating community problems and needs, evaluating the problems and needs, and relating proposed programming to the evaluated problems and needs. The FCC has denied applications based on the failure of the applicant to ascertain these criteria in accordance with the requirements of the primer. The FCC calls this procedure "ascertainment."

Current FCC rules require a broadcaster to keep detailed records of his programming and commercial time. The program log rules require numerous entries, such as the source of each program (e.g., networks, etc.), the time each program begins and ends, the sponsor(s) of the program, and the public service announcements that the station broadcasts. A radio station licensee must make these logs available to the public on request.

In the notices proposing radio deregulation, the FCC said:

We have long been, and remain, committed to the principle that radio must serve the needs of the public. We have never, however, believed that radio is a static medium that requires the retention of every rule and policy once adopted. A regulation that was reasonable when adopted, and appropriate to meet a given problem, may be most inappropriate if retained once the problem ceases to exist. In our view, it is vital that our rules and policies be appropriate for the industry and marketplace we regulate, reducing regulation to the maximum extent consistent with the public interest, convenience and necessity. We note in passing that Congress is now examining whether legislative reform is necessary to foster optimum development of all

communications industries, including broadcasting. Additionally, the President has ordered executive agencies to adopt procedures to improve existing and future regulations, including the deletion of unneeded ones.

Alternatives Under Consideration

The advantages and disadvantages of each proposal are discussed in paragraphs 243 through 250 of the Notice of Inquiry/Notice of Proposed Rulemaking.

(1) There are a number of alternative approaches by which the FCC could modify or eliminate current nonentertainment rules and policies:

(A) The FCC could remove itself from all consideration of the amounts of nonentertainment programming that commercial radio licensees furnish, leaving it to the marketplace to determine what levels of such programming broadcasters would present.

(B) The FCC could relieve individual licensees of any obligation to provide nonentertainment programming but could, instead, analyze the amounts of such programming on a nationwide basis, and if the amount of such programming in a particular market fell below a certain level, the FCC then could taken action to redress the matter.

(C) The FCC could free licensees of any specific responsibilities with respect to nonentertainment programming (as well as ascertainment and commercial limits) but would require licensees to show, if their renewals were challenged, that they were serving the public interest.

(D) The FCC could impose quantitative programming standards (and not just set out guidelines) for each nonentertainment programming category, such as a minimum number of hours per week for each category of programming or a specified percentage of time to be devoted to each category.

(E) The FCC could impose quantitative standards, but measure the adequacy of programming on the basis of each station's expenditures. In other words, the FCC could mandate a proportion of revenues or profits that a station must reinvest in nonentertainment programming.

(F) The FCC could establish a minimum, fixed percentage of local public service programming that licensees would have to present—including local news, public affairs and public service announcements, community bulletin boards, or any other locally-produced nonentertainment programming that served local needs.

(2) Changes in the commercial limit rules that the FCC is now considering include:

(A) Eliminating all rules and policies dealing with the amount of commercial time and allowing the marketplace to determine tolerable levels of commercialization.

(B) Setting quantitative standards which, if ignored, would result in the FCC imposing some sanction against the licensee.

(C) Eliminating all rules specific to individual licensees but interceding if heavy levels of commercialization occurred marketwide.

(D) Retaining quantitative guidelines but only with regard to the Broadcast Bureau's delegation of authority.

(3) The Commission said there were four options warranting consideration in the area of ascertainment of community problems and needs:

(A) The FCC could eliminate all Federally mandated ascertainment requirements and leave it to marketplace forces to ensure that stations provided programming to meet the needs and problems of each station's listenership.

(B) The FCC could require that licensees conduct ascertainment but permit them to decide in good faith how best to conduct that ascertainment without the current detail of formalized FCC requirements.

(C) The FCC could retain the ascertainment requirement, but in a simplified form.

(D) The FCC could retain existing ascertainment requirements.

(4) The FCC's requirements for program logging are intended, in part, to assure documentation of

nonentertainment programming and commercial practices. If we removed nonentertainment programming and commercial requirements as a result of this proceeding, we also would consider eliminating or modifying program log requirements. However, members of the public challenging a station's programming failure might need these records to substantiate such claims. Therefore, the FCC is considering the following three options:

(A) The FCC could eliminate the need for AM and commercial FM stations to keep program logs.

(B) The FCC could eliminate its program log requirements, but require any licensee keeping records of its programming or commercial schedules for its own purposes to make these available to the public in accordance with procedures outlined in the Commission's rules.

(C) The FCC could continue current program logging and disclosure requirements.

Summary of Benefits

Sectors Affected: The radio broadcasting industry, including networks, local stations, and programming and production services; the advertising industry; radio listeners; and the FCC (and accordingly, the taxpayer). Over 95 percent of households own radio receivers, and there are 7,799 stations, providing commercial radio broadcasting to the public.

If adopted, this Inquiry/Proposal could affect the internal work priorities of the FCC by allowing the shifting of personnel, who currently are engaged in reviewing applications to determine whether the guidelines have been met, into areas that the Commission believes are more worthy of their attention. Also, it would allow for more efficient use of personnel. Over time, this might result in an alteration of personnel needs.

The FCC said in the Inquiry/Proposal that it had seen evidence that market forces will, in most instances, yield programming that serves consumer well-being. If the FCC adopts deregulation, the FCC anticipates that radio programming would reflect listeners' tastes, rather than regulatory decisions.

The FCC has now received public comments on the issue of potential benefits of this proposal. Over 20,000 comments were received covering a wide range of views on virtually all of the major issues.

The savings (in terms of costs to licensees) of having to comply with fewer regulations could be passed on to the consumer.

Summary of Costs

Sectors Affected: The radio broadcasting industry, including networks, local stations, and programming and production services; the advertising industry; radio listeners; and the FCC (and accordingly, the taxpayer).

If adopted, this Inquiry/Proposal could cause changes in the internal work priorities of the FCC as set forth above.

The FCC has asked for public comment on potential costs of the Inquiry/Proposal and comments are being reviewed. For this reason, the FCC has not made any express findings of costs.

The FCC is interested in learning during the comment period if this proceeding will affect any other sectors. Some members of the public have

suggested that the deregulation Inquiry/Proposal will not result in broadcasting which serves the public interest.

Although comments have been received relative to the costs to stations of complying with the requirements of regulations, no consensus on those costs is present in the comments.

Related Regulations and Actions

Internal: The FCC has had, and is continuing, a long-standing project of broadcast deregulation. That project is intended to streamline Commission rules relating to broadcast radio and television. The substantive changes to Commission rules pertaining to radio proposed in this proceeding is an outgrowth of both broadcast deregulation and the Commission's longstanding policy that its rules remain relevant to an industry and technology characterized from its inception by rapid and fundamental change.

External: None.

Active Government Collaboration

None.

Timetable

Report and Order by December 31, 1980.

Regulatory Analysis—The FCC, as an independent agency, is not required to prepare a Regulatory Analysis as it is defined under E.O. 12044. However, the FCC does an extensive analysis of the economic effects of regulation.

Available Documents

Public Comments available/Broadcast Bureau.

FCC Fact Sheet on Radio Deregulation Proposals available from the Broadcast Bureau.

The Notice of Inquiry/NPRM issued September 6, 1979 is available on request from the FCC's Office of Public Affairs, Washington, DC 20554. Request BC Docket 79-219.

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FEDERAL MARITIME COMMISSION

Amendments to Tariff Filing Requirements for Controlled Carriers (46 CFR Part 536*)

Legal Authority

The Shipping Act of 1916, §§ 18(b), 18(c), 21, and 43, 46 U.S.C. §§ 817(b), 817(c), 820, and 841(a); Ocean Shipping Act of 1978, P.L. 95-483, 92 Stat. 1607.

Reason for Including This Entry

The Federal Maritime Commission (FMC) thinks this rule is important because it will have a salutary impact on the U.S. liner trades.

Statement of Problem

Section 18(c) of the Shipping Act of 1916, as amended by the Ocean Shipping Act of 1978, provides that the FMC shall regulate the rates and charges for ocean transportation services filed by certain state-owned or -controlled carriers operating in the foreign commerce of the United States. The term "state-controlled carrier" means a common carrier by water in the foreign commerce of the United States whose operating assets are directly or indirectly owned or controlled by the sovereign government (i.e., state) under whose registry the carrier's vessels operate. Controlled carriers, operating as "cross-traders" (carriers that operate in a specific trade and do not fly the flag of the exporting or importing nations in that trade) in the U.S. oceanborne foreign commerce and backed by the resources of their government have penetrated the United States liner trades by actively and systematically pursuing a practice of rate cutting (maintaining rates in their tariffs that may be below a level which is just and reasonable) to attract more cargo for their ships. Their rates may be set at 15 to 50 percent below the rate levels established by ocean carrier conferences and other independent carriers operating in the same trades. Such rate cutting threatens to disrupt the international trade of the United States and may jeopardize the economic viability of U.S. flag carriers as well as other privately owned carriers. The seriousness of the problem was underscored by the fact that the state-controlled carriers of one nation which did not trade at all in the U.S. ocean commerce several years ago had captured 5 to 10 percent of the cargo on several U.S. trade routes at the time of the enactment of the Ocean Shipping Act of 1978.

The Ocean Shipping Act of 1978 P.L. 95-483 strengthens the provisions of the Shipping Act of 1916 and thus the powers of the Federal Maritime Commission to regulate the rate cutting practices of state-controlled carriers. The provisions of § 18(c) of the Shipping Act of 1916, which were created by the Ocean Shipping Act of 1978 and became effective November 17, 1978, impose upon the Federal Maritime Commission the responsibility to regulate the rates and practices of certain state-owned or -controlled carriers operating in the oceanborne foreign commerce of the

United States in order to eliminate the threat posed by such rate cutting.

The Commission proposes to amend 46 CFR Part 536 to implement the requirements of P.L. 95-483. The proposed amendments prescribe the technical requirements for the publication, filing, justification, and suspension of controlled carrier tariff rates, charges, classifications, and rules. They also require that all common carriers annually file with the Federal Maritime Commission an information circular which contains specific questions related to the carriers' ownership, vessels, subsidiaries, service, flag, form of organization, forwarding activities, consolidation activities, intermodal operations, and the number of containers owned or leased.

The Commission, acting under the authority of § 21 of the Shipping Act of 1916, added this requirement to 46 CFR Part 536 so that it will be apprised of all controlled carriers serving the U.S. trades. However, the Commission will give these controlled carriers an opportunity to submit information which may warrant an exemption from the requirements of § 18(c).

Alternatives Under Consideration

There are no realistic alternatives because the proposed rules are necessary to implement the requirements of P.L. 95-483. In enacting this legislation, the Congress provided the Commission with no flexibility in the interpretation of the tariff filing requirements needed to put the law into effect and specifically mandated that Commission responsibilities be broadened to address the problem. Although the Commission has many alternatives in the administration of P.L. 95-483, there are no alternatives to the tariff filing requirements which literally implement the law.

Summary of Benefits

Sectors Affected: All common carriers in the foreign commerce of the United States (deep sea foreign transportation); shippers; and the general public.

It is necessary to provide a systematic method to adopt the standards set forth in P.L. 95-483, which was designed to prevent controlled carrier penetration and disruption of U.S. trades through rates and practices which are unjust and unreasonable. The requirement that all common carriers file an information circular with the Federal Maritime Commission is needed for the Commission to properly classify common carriers entering or leaving trades in the U.S. foreign commerce and

to identify those which are state-controlled. The proposal will protect all privately owned carriers operating in the U.S. oceanborne foreign trade from the noncompensatory rates and predatory practices of controlled carriers which operate without covering the cost of the resources used in the provision of a shipping service. The information obtained from the circular will also benefit privately owned carriers, shippers, and the general public by identifying those carriers which are state-owned and providing those sectors with information regarding their ownership, registry, and operations.

Summary of Costs

Sectors Affected: All common carriers in the foreign commerce of the United States (deep sea foreign transportation).

All carriers required to file the information circular will have some administrative costs. In our NPRM, we asked the carriers to provide an estimate of the financial and man-hour burden expected of them. We also asked controlled carriers to submit a separate estimate of the financial and man-hour burden, if any, which will be incurred in complying with the other requirements of the proposed rules. Shippers, the users of ocean transportation, are the Commission's real consumers; therefore, it is extremely difficult, if not impossible, to determine the cost of the proposed rules to the lay consumer.

Related Regulations and Actions

None.

Active Government Collaboration

The Department of State and the Commission, before the rulemaking, coordinated an effort to initially identify state-controlled carriers.

Timetable

Regulatory Analysis—This rule does not require a Regulatory Analysis under E.O. 12044 because we are developing it through a formal rulemaking process in accordance with the Administrative Procedure Act.

Final Rule—Winter 1980-1981.

Final Rule Effective—Winter 1980-1981.

Available Documents

NPRM—45 FR 42721, June 25, 1980.

Federal Maritime Commission Docket 80-40.

All documents are available for review in the Office of the Secretary, Federal Maritime Commission, Room 11101, 1100 L Street, N.W., Washington, DC 20573.

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FMC

Filing of Currency Adjustment Factors (46 CFR Parts 536* and 538*)

Legal Authority

The Shipping Act of 1916, 46 U.S.C. §§ 813(a), 817(b), 820, 833(a), and 841(a).

Reason for Including This Entry

The Federal Maritime Commission (FMC) thinks this rule is important because it will provide shippers with greater rate stability and the consequent ability to improve long-range commercial marketing practices.

Statement of Problem

The shocks absorbed in foreign exchange markets since 1971, arising from two devaluations of the U.S. dollar and a shift of most of the major currencies from fixed to floating exchange rates, have created frequent and substantial fluctuations in these exchange rates. Consequently, ocean carriers and conferences (associations of carriers permitted, pursuant to an agreement approved by the Commission under § 15 of the Shipping Act of 1916, to discuss, establish, and file rates and practices on behalf of their member lines) have filed numerous currency adjustment factors with the Commission in recent years to accommodate currency fluctuations. A currency adjustment factor is a surcharge imposed upon the shipping public by steamship carriers and conferences to allow for the adjustment of ocean freight rates to reflect currency fluctuations. Several years ago, carriers in the U.S. foreign commerce began to impose these surcharges upon the shipping public in response to currency changes.

Whenever currency adjustment factors are established by steamship conferences, the shipping public frequently registers legitimate complaints about their establishment. Over the last several years, the Commission has received an increased number of such complaints, centering on three major issues. One major complaint refers to the fact that such surcharges often do not reflect current foreign exchange market conditions because currency surcharges are generally implemented some time after the negative currency fluctuation in

question has occurred. Another complaint concerns the allegedly disproportionate level of the surcharge imposed in response to the currency fluctuation and the methods used in its computation. The shipping public also protests the lack of reciprocal adjustments to reflect positive tariff currency changes.

When a surcharge of any type is filed by an ocean carrier or conference, the Commission has an obligation to ensure that these transportation costs will not unduly impede our international trade by interfering with the efficient flow of goods or imposing costs upon U.S. exporters that are unreasonably high in comparison to costs imposed upon their foreign counterparts. In response to this obligation, the Commission promulgated rules to provide for a procedure under which certain carriers and conferences that operate pursuant to a Commission-approved system of dual-rates could justify and impose currency surcharges on less than the required statutory notice period (90 days) in the event of a depreciation of the tariff currency. (Dual-rate contracts are used as a patronage or loyalty device to offer lower rates to shippers who agree to give all or a fixed portion of their shipments to a specific carrier or conference. The Shipping Act of 1916 requires that the contract rate shall not be more than 15 percent lower than the published ordinary rate.) Owing to its cumbersome requirements for justifying a "short-notice" currency surcharge, this rule has never been used by any carrier or conference since its promulgation.

Since this rule has never been used, the staff of the Commission developed other, informal procedures in February 1977 to validate currency surcharges. However, this system did not produce sufficient data to permit proper evaluation of the surcharges. Since the existing formal rule has never been used and the Commission's informal system has yielded inadequate data regarding the validity of currency surcharges, it has become apparent that a new procedure is required.

The proposed regulation replaces the existing rules, which apply only to carriers and conferences employing approved dual-rate systems. The purpose of the new regulation is to establish procedures and tariff filing requirements under which steamship carriers and conferences may publish and file currency adjustment factors in their ocean freight rate tariffs on not less than 15 days' notice in the event of a change in the value of the tariff currency. The proposed rule will establish a simplified and uniform

procedure for the filing of all currency surcharges and will apply to all carriers and conferences.

The proposed regulation represents an effective system which will ensure prompt Commission consideration of all currency surcharges. The proposal establishes clear, understandable procedures that are equitable to the industry and permit adequate review by the Commission to ensure protection of the shipping public.

Alternatives Under Consideration

Retention of the existing rules and the informal currency surcharge validation system is an alternative. However, to do so would cause the Commission to be unresponsive to problems that have arisen under these procedures. For example, one of these problems concerns the selection of a base date used by a carrier or conference to compute the level of a currency surcharge. The proposed rule eliminates the uncertainties under existing procedures by specifically defining the base date that must be used.

If the Commission takes no action, regulatory supervision over carriers and conferences imposing currency surcharges will continue to be inadequate and the shipping public will not benefit from the increased degree of protection that would be provided through the rule.

Other alternatives would entail different systems of evaluating currency adjustment factors. However, the Commission believes the existing proposal is the simplest and most equitable because it affords shippers the greatest protection while imposing the least burden upon the industry and generating the least administrative cost within the FMC.

Summary of Benefits

Sectors Affected: Steamship carriers and conferences operating in the U.S. foreign commerce (deep sea foreign transportation); and shippers.

All steamship carriers and conferences operating in the U.S. foreign commerce will be affected by the proposed rule if they impose currency surcharges. The rule will allow carriers and conferences to impose such surcharges on short notice (15 days), thus permitting more responsive and faster adjustments in rates due to currency fluctuations. The proposal establishes a simplified and uniform procedure for the publication of currency adjustment factors. This will enable the Commission to fairly, reasonably, and promptly review these surcharges under statutory standards

and provide a greater degree of protection to the shipping public.

The rule also requires a reciprocal adjustment in rates if the tariff currency appreciates by 2 percent or more. This requirement permits the currency adjustment factor to operate as a true adjustment, restoring the prior currency relationship, and it is therefore clearly responsive to shippers' complaints. Since the methods used to compute a currency adjustment factor level as prescribed in the rule are uniform, shippers will be aware of how individual currency surcharges are determined.

Summary of Costs

Sectors Affected: Steamship carriers and conferences operating in the U.S. foreign commerce (deep sea foreign transportation).

No quantitative estimate of the relative costs are available. However, those carriers and conferences imposing currency surcharges must submit expense data in a specific format (Currency Adjustment Factor Computation Statement), and thus will incur some administrative costs.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

Regulatory Analysis—This rule does not require a Regulatory Analysis under E.O. 12044 because we are developing it through a formal rule-making process in accordance with the Administrative Procedure Act.

Final Rule—Fall-winter 1980.

Final Rule Effective—Fall-winter 1980.

Available Documents

NPRM—45 FR 23708, April 8, 1980.
Public Comments.

Federal Maritime Commission Docket 80-19.

Commission General Order 13, "Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States" (46 CFR Part 536).

Commission General Order 19, "Dual-Rate Contract Systems in the Foreign Commerce of the United States" (46 CFR Part 538).

All documents are available for review in the Office of the Secretary, Federal Maritime Commission, Room 11101, 1100 L Street, N.W., Washington, DC 20573.

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FMC

Revision of Commission General Order 4, Licensing of Independent Ocean Freight Forwarders (46 CFR Part 510*)

Legal Authority

Shipping Act of 1916, 46 U.S.C. §§ 820, 841(a), and 841(b); Shipping Act Amendments of 1979, P.L. 96-25, 93 Stat. 71.

Reason for Including This Entry

The Federal Maritime Commission (FMC) thinks this rule is important because it will substantially affect the entire ocean freight forwarding industry and that industry's commercial relationships with the shipping public and oceangoing common carriers, thus affecting a significant portion of United States export commerce. It will modernize the Commission's regulations affecting the freight forwarding industry, which have not been substantially modified in 18 years, to reflect significant changes in the practices and economics characterizing the U.S. ocean commerce.

Statement of Problem

There is a need to revise and modify FMC General Order 4, "Licensing of Independent Ocean Freight Forwarders," to reflect the changing nature of the U.S. export commerce. An independent ocean freight forwarder is an individual, corporation, partnership, association, or other legal entity that, for a fee, dispatches shipments on behalf of oceangoing common carriers and handles the processing incident to such shipments. Most independent ocean freight forwarders are smaller businesses. Services rendered by this industry include the dispatching and facilitation of export cargo on behalf of shippers; examining instructions and documents received from shippers; preparing and processing export declarations; booking or confirming cargo space; preparing and processing delivery orders and dock receipts; arranging for and furnishing trucks and lighters (boats used in unloading and loading vessels not lying at wharves, or in transporting freight about a harbor); preparing instructions to truckmen and lightermen; preparing and processing ocean bills of lading; preparing and processing government international commercial documents and arranging

for their certification; arranging for and furnishing warehouse storage; arranging for insurance; clearing shipments in accordance with U.S. Government export regulations; preparing and sending advance notifications of shipments and other documents to banks, shippers, or consignees; advancing necessary funds in connection with the dispatching of shipments; coordinating the movement of shipments from origin to vessel; rendering special services in connection with unusual shipments or difficulties in transit; and giving expert advice to exporters concerning letters of credit, licenses, and inspections.

The FMC's General Order 4 sets forth regulations affecting all aspects of these functions by establishing criteria for qualification as an independent ocean freight forwarder and setting guidelines for the performance of forwarding duties, specifically providing for the Commission's licensing of independent ocean freight forwarders, the procedure for applying for licenses, the qualifications required of applicants, and the grounds for Commission revocation or suspension of licenses. The General Order also contains rules pertaining to the practices of licensed independent ocean freight forwarders, ocean freight brokers (persons engaged by a carrier to sell transportation services and who hold themselves out by solicitation or advertisement as entities who negotiate between shipper and carrier for the purchase, sale, conditions, and terms of transportation), and oceangoing common carriers, pursuant to 46 U.S.C. § 841(b) as enumerated above. The FMC believes that since the General Order was originally issued in December, 1961, many of the rules published in that Order have become outdated and impractical, creating confusion and consequent inefficiency in their application.

Additionally, substantive questions have arisen which the proposed rule attempts to resolve. At present, the FMC does not require each branch office of a licensed forwarder to post a separate surety bond covering the cargo shipments it handles nor have a qualified individual supervise its operation. For better protection of the shipping public, the FMC believes that consideration should be given to requiring each branch office to be separately licensed, and individually bonded, and to have its own qualifying officer or individual. The FMC also needs to clarify fitness qualifications for prospective forwarders and establish a more realistic rule governing the

forwarder's payment of freight monies to the carrier. Increased costs compel higher license fees and the policies of the Shipping Act Amendments of 1979, P.L. 96-25, 93 Stat. 71, need to be reflected in the General Order, ensuring that forwarders certify as required by the FMC, that they will not engage in illegal rebating activities (46 U.S.C. § 802(b)) and will be subject, if necessary, to the Commission's assessment of civil penalties for such activities (46 U.S.C. § 831(e)).

If the FMC takes no action at this time, regulatory supervision over freight forwarding will be more difficult and less current, and the shipping public may not be sufficiently protected from injury caused by inexperience, malpractices, negligence, or financial mismanagement.

Alternatives Under Consideration

Retention of the existing General Order 4 is an alternative, but it represents an option that would be unresponsive to current commercial practices in the ocean shipping industry and to the problems that have arisen under the regulations encompassed in the current Order.

The proposed rule requires a surety bond in the same amount from each licensed branch office. This may prove to be too burdensome for some small branch offices while providing insufficient indemnification of the shipping public for other, larger offices. The proposal invites comments on the alternative approach of graded levels of surety bonds from a forwarder's home office, depending on the company's number of branch offices.

In evaluating alternative criteria which may be used to determine the qualifications for a forwarding license, the Commission must weigh the administrative costs, paperwork burden, and overall regulatory burden of extensive criteria for qualification against the need to protect the shipping public from unscrupulous or financially irresponsible applicants. Similarly, in considering alternative criteria for revocation and/or suspension of forwarding licenses, the FMC must balance the regulatory burden of careful monitoring and oversight of the forwarding industry against the ongoing need to protect the shipping public.

The FMC invited comments on alternative proposals and methodologies from interested parties on all or any part of the proposed rule.

Summary of Benefits

Sectors Affected: Independent ocean freight forwarders; shippers; and

oceangoing common carriers (deep sea transportation).

Through more detailed clarification of the qualifications necessary to obtain a license and the rights and duties of forwarders in their relationships with shippers and carriers, the FMC anticipates fewer problems developing within this industry, with a resulting decrease in the need for more burdensome regulation in the form of formal proceedings and assessment of civil penalties.

There are more than 1,300 licensed independent ocean freight forwarders located in almost every State, most of whom will benefit from this rule. By increasing the time within which such forwarders must make payment of freight monies to carriers, a more orderly and commercially realistic operation should emerge. Forwarders will also benefit by being allowed to deduct from such freight payments monies owned them by the carriers. Currently licensed responsible freight forwarders will also be better protected from competition from irresponsible or inexperienced forwarders, both licensed and unlicensed.

All manufacturers of goods for export abroad, located in every State of the United States, represent shippers that will benefit from the protections afforded by the proposed rule. A stringent rule requiring payment by the forwarder to the carrier of the freight monies advanced by the shipper should minimize those situations where the carrier sues the shipper for such freight monies when a forwarder does not pay it. A more experienced and responsive forwarding industry will perform better services for shippers. Where something does go wrong, shippers will be better protected by more stringent and adequate surety-bond requirements.

Oceangoing common carriers departing every U.S. port will benefit by a more responsive forwarding industry. More cargo will be generated for carriage, leaving little to do by the carrier itself other than loading cargo aboard ship and taking the cargo to its destination.

A revised and clarified General Order should benefit all affected sectors by providing a better description of the rights and obligations attendant upon all participants in forwarding activities and transactions. Revision of General Order 4 also provides the opportunity to modernize existing regulations to conform to current commercial needs and practices, with consequent benefits for all affected sectors.

Summary of Costs

Sectors Affected: Independent ocean freight forwarders.

As a result of increased costs determined by an FMC cost analysis, the proposed rule would increase license application fees from \$125 to \$350 and add new fees of \$100 each for supplementary investigations and processing applications for approval of changes. The estimated yearly aggregate increase in cost to the independent ocean freight forwarding industry of this increase would be \$65,000. Record-keeping and reporting requirements have been slightly changed. Other than these, the FMC cannot accurately evaluate the regulatory burden, but in our NPRM, we asked interested parties to provide an estimate of the financial and work-hour burdens that will be incurred in complying with the recordkeeping and reporting requirements as well as with other substantive regulations.

Related Regulations and Actions

Internal: The proposed rule would eliminate publication in the **Federal Register** of notice of applications for independent ocean freight forwarder licenses as unnecessary. A separate rulemaking to accomplish this in more expeditious fashion is being considered.

External: None.

Active Government Collaboration

None.

Timetable

Regulatory Analysis—This rule does not require a Regulatory Analysis under E.O. 12044 because we are developing it through a formal rulemaking process in accordance with the Administrative Procedure Act.

Final Rule—December 1980.

Final Rule Effective—December 1980; branch office licensing may become effective somewhat later.

Available Documents

NPRM—45 FR 17029, March 17, 1980.

Federal Maritime Commission Docket 80-13.

All documents are available for review in the Office of the Secretary, Federal Maritime Commission, Room 11101, 1100 L Street, N.W., Washington, D.C. 20573.

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INTERSTATE COMMERCE COMMISSION

Elimination of Gateway Restrictions and Circuitous Route Limitations; Removal of Restrictions From Authorities of Motor Carriers of Property (Ex Parte No. 142; Ex Parte No. 142 (Sub-No. 1)) (49 CFR Chapter X*)

Legal Authority

Interstate Commerce Act, 49 U.S.C. §§ 10321 and 10922(h).

Reason for Including This Entry

The Interstate Commerce Commission (ICC) believes these related rulemakings are important because they implement Congressional mandates which mark significant changes in the manner in which we regulate. These major reforms will allow carriers much greater flexibility in the routes they may use, the services they may offer, the territories they may serve, and the commodities they may haul. The cumulative effect of these reforms will reduce carriers' operating inefficiencies and will also reduce wasted fuel.

Statement of Problem

Under the existing scheme of economic regulation, persons seeking to transport most types of property by motor carrier in interstate commerce must first obtain common or contract operating authority from the ICC. Applications are filed with the Commission seeking to transport certain commodities, and to serve certain territories. These applications may also include self-imposed limitations on service (e.g., restricting service to or from a shipper's plantsite; restricting service to that performed in specialized equipment, such as vehicles equipped with mechanical refrigeration or in bulk; or excluding service to a particular commercial zone, or to any number of points in a certain territory). The ICC always retains the power to include restrictions that are found to be in the public interest.

In the Motor Carrier Act of 1980 (the Act), Congress recognizes that in the past, carriers have often imposed limitations on themselves—that is, they have applied for the narrowest possible authority—as a means of avoiding opposition to their applications by other carriers who contend that such applications could damage their own operations. This situation has resulted in thousands of narrow-authority applications. This not only creates a burden on the ICC, but the self-imposed

limitations also result in diminished service to the public, increased operating inefficiencies for the carrier, and wasted fuel. The cumulative costs of limitations are often passed on to the ultimate consumer and are reflected in increased costs.

For instance, current regulatory restrictions may prevent certain carriers from providing service by way of the most direct routes, since they only authorize those carriers to travel on specified routes ("regular-route" carriers). Carriers are sometimes subject to extremely narrow limitations on the types of commodities they can transport and the territories they can serve. Existing authorities may prohibit carriers from serving intermediate points on their routes, or prohibit them from obtaining revenue-paying freight for return trips (backhauls) because they have only one-way authority to or from certain markets.

The Act directs the ICC either to eliminate these restrictions by the end of 1980 or to prescribe procedures by which carriers can apply to eliminate, or lessen the impact of, these restrictions. The Commission is conducting two rulemakings in response to the Act's mandate.

In Ex Parte No. MC-142, Elimination of Gateway Restrictions and Circuitous Route Limitations, the ICC proposes to adopt rules which would allow property carriers to perform their services over any available route. Presently, some carriers can only provide point-to-point service by operating over a prescribed route, which is not necessarily the most direct, or by joining separate grants of operating authority (serving Washington-New York by joining authorities to serve Washington-Pittsburgh and New York-Pittsburgh). This proposal would repeal most existing rules, allowing carriers to deviate from prescribed regular routes.

In Ex Parte No. MC-142 (Sub-No. 1), Removal of Restrictions from Authorities of Motor Carriers of Property, the ICC proposes to adopt rules that would establish expedited procedures for carriers to use in filing applications to eliminate restrictions or broaden unduly narrow service limitations or commodity descriptions in their existing authorities. The rules would contain guidelines designed to assist applicants in filing applications for the removal of operating restrictions by indicating certain types of restrictions or operating limitations in operating authorities which the Commission considers, under normal circumstances, to be excessively narrow, wasteful of fuel, inefficient, or contrary to the public interest.

Alternatives Under Consideration

There are no specific alternatives presently contemplated. The ICC will consider feasible alternatives, proposed by the public during the comment period, which are consistent with the national transportation policy.

Summary of Benefits

Sectors Affected: The motor carrier industry; shippers and consumers of products transported by truck, particularly small shippers and shippers and consumers serving and located in small and rural locations; and the ICC.

Adoption of these rules is expected to increase competition in the motor carrier industry, to result in fuel savings and concurrent cost savings, to reduce transit time for delivery, to improve the operating efficiency of carriers, and to aid in providing and maintaining service to small and rural communities and small shippers. These benefits are expected to accrue as the motor carrier industry gears itself to operating in a competitive business environment where there is less intrusive government regulation.

Summary of Costs

Sectors Affected: The motor carrier industry; and the ICC.

The costs of transporting products are expected to decrease overall; however, because market forces will be a more determinative factor in transportation, the costs of transporting products to or from particular rural locations may increase for some carriers not geared to rural operations. It is conceivable that increased competition might lead to diminished business for less efficient carriers or carriers who are not receptive and responsive to market conditions. In this situation, however, more efficient carriers with lower costs would be favored with greater amounts of traffic from the shipping public.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

Final Rule—December 1980.

*Regulatory Analysis—*The Commission does not plan to issue a separate Regulatory Analysis in this proceeding. The notice of final rules will incorporate the results of our regulatory analysis process.

Available Documents

NPRM published at 45 FR 61333, September 16, 1980 (Ex Parte No. MC-142).

NPRM published at 45 FR 61326, September 16, 1980 (Ex Parte No. MC-142) (Sub-No. 1).

Public comments are available for review in the Office of the Secretary, 12th St. and Constitution Avenue, N.W., Washington, DC. (Ask for docket for Ex Parte No. MC-142 and MC-142, Sub-No. 1.)

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ICC

Rules Governing Applications for Operating Authority; Acceptable Forms of Requests for Operating Authority (Ex Parte No. 55 (Sub-Nos. 43 and 43A)) (49 CFR Chapter X*)

Legal Authority

Interstate Commerce Act, 49 U.S.C. §§ 10922, 10923, and 10321.

Reason for Including This Entry

The Interstate Commerce Commission (ICC) believes these related rulemakings are important because they will encourage competition by establishing simpler and expedited procedures for those who apply to the ICC for motor carrier operating authority under the Motor Carrier Act of 1980 P.L. 96-296).

Statement of Problem

Under the existing scheme of economic regulation, persons seeking to operate in interstate or foreign commerce as motor carriers, water carriers, freight forwarders, and brokers must first obtain appropriate authority from the ICC. Former ICC policies effectively made it difficult to obtain authority to operate as a motor carrier of property. Authorities which were granted often were narrowly drafted and contained restrictions limiting the service carriers could offer the public.

The Motor Carrier Act of 1980 relaxes the entry criteria for new and existing motor carriers of property, requires the ICC to expedite its processing of all non-rail applications for operating authority,

directs the ICC to implement procedures broadening descriptions of service which motor carriers can offer, and prohibits most restrictions and limitations on authorizations for services.

These two rulemakings not only simplify the application process for motor carriers, water carriers, freight forwarders, and brokers, but also adopt interim rules for the ICC's processing of applications, which will eliminate unnecessary regulatory examination of applications. Furthermore, because the proposed regulations would grant broad operating authority to motor carriers of property, carriers would not, in many instances, be required to file new applications for authority each time they seek to broaden the service they want to offer.

In the Ex Parte No. 55 (Sub-No. 43) proceeding, Rules Governing Applications for Operating Authority, the ICC proposes simplified filing procedures and a revised application form for all non-rail applications for operating authority. For certain applications for authority ("fitness-related" applications), applicants must meet fewer criteria than would otherwise be applicable, and need only supply sufficient information to establish themselves as fit. The ICC will process most applications through its modified procedure (parties exchange sworn statements rather than present their evidence in an oral hearing), which statutorily requires an initial decision within 180 days of the date the application is filed with the ICC. Prior to the Motor Carrier Act, ICC rendered initial decisions upwards of 400 days after the application was filed with the ICC (sometimes longer for applications assigned to oral hearing). Parties may request oral hearing, but only in extraordinary cases will the ICC consider applications for operating authority in an oral hearing procedure.

The proposed application process also provides that carriers may consolidate their existing operating authorities. Carriers presently may own hundreds of separate, fragmented operating authorities. The new procedure allows carriers to make one filing for consolidation of and expansion upon their existing authorities. This will make it easier for carriers and the public to ascertain what service carriers can offer and will decrease the number of times carriers will have to file for more authority.

The Commission has adopted the application process on an interim basis, in response to the Motor Carrier Act of 1980. Final rules are expected to be adopted by December 1980.

In Ex Parte No. 55 (Sub-No. 43A), Acceptable Forms of Requests for Operating Authority, the Commission is proposing broader and simpler descriptions of authorized service in its granting of operating authority for motor carriers of property. We presently describe all operating authority in terms of geography, commodity, and service limitations. The proposed rules would require most carriers to file for at least countrywide authority, would eliminate most service limitations, and would establish a short list of broad commodity descriptions under which all commodities would be classified.

Alternatives Under Consideration

The Commission's application process is keyed to the new statutory requirements for speedy processing. We believe that broader, simplified operating authority for motor carriers is consistent with the pro-competitive aims of the new Motor Carrier Act. However, the Commission, in the NPRM, does ask for alternatives to the proposed forms of requests for operating authority, particularly in the area of commodity descriptions. The proposed rule would use a commodity classification system now employed by railroads, but the ICC realizes this may not be suitable for motor carriers.

Summary of Benefits

Sectors Affected: The regulated non-rail transportation industry (including motor carriers, water transporters, freight forwarders, and brokers), particularly the trucking industry; shippers; ultimate consumers of products transported by truck; and the ICC.

The ICC believes that the new application process will make entry into the regulated motor carrier industry easier by lowering the regulatory restraints to entry, e.g., the simpler application form will reduce Federal paperwork compliance requirements. Because of broadened authority that would be granted to applicants, the new application process will also reduce the total number of filings that a carrier will be required to make with the ICC to achieve any desired level of service.

The proposed rules would reduce paperwork compliance costs to carriers by establishing simpler procedures used in fitness-related applications, by reducing the number of copies of pleadings which the Commission requires, and by requiring less filings, each of which requires a filing fee. In this way, carriers which obtain operating authority could pass savings on to the consumer. More importantly, by easing the regulatory restraints on

obtaining operating authority, there will probably be more applicants. Once they are granted their authority, we believe they will force existing regulated carriers to be more competitive, generally lowering freight charges to attract business. This will result in lower prices which could be passed on to consumers of transportation services.

Summary of Costs

Sectors Affected: None.

ICC anticipates no new costs from this proposal.

Related Regulations and Actions

Internal: In Ex Parte No. MC-143, Owner-Operator Food Transportation, an NPRM has been issued requesting comments on a fitness-related application for operating authority for owner-operator transportation of regulated food and other edible products. The proposed rules establish simplified rate filings provisions and an annual reporting form, so that compliance with the requirements of operating under this authority may be monitored. Additionally, the rules propose that a filing fee for the application be waived.

Regulations existing before July 1, 1980 governing applications for operating authority and acceptable forms of requests for operating authority have been superseded by Ex Parte No. 55 (Sub-Nos. 43 and 43A).

External: None.

Active Government Collaboration

None.

Timetable

Final Rule—December 1980.

Regulatory Analysis—The Commission does not plan to issue a separate Regulatory Analysis in this proceeding. The notice of final rules will incorporate the results of our regulatory analysis process.

Available Documents

Ex Parte No. 55 (Sub-No. 43) [Notice of interim rules and request for comments on interim rules as basis for final rules] and Ex Parte No. 55 (Sub-No. 43A) [Notice of proposed policy statement] appear at 45 FR 45534 and 45545, July 3, 1980, respectively.

Public comments are available for review in the Office of the Secretary, 12th St. and Constitution Avenue N.W., Washington, DC (Ask for docket for Ex Parte No. 55 Sub-Nos. 43 and 43A.)

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POSTAL RATE COMMISSION

**Experimental Classification—
Rulemaking Docket No. RM80-2 (39
CFR 3001.120 et seq.)**

Legal Authority

The Postal Reorganization Act of 1970, as amended, §§ 3603, 3622, and 3623, 39 U.S.C. § 3601 (1970).

Reason for Including This Entry

This rulemaking may have a national effect because it may help to facilitate the Postal Service's offering of new postal services which it has developed with the assistance of marketplace experiments. It is of national concern because changes in postal services can affect all mail users.

Statement of Problem

The Postal Service must request a recommended decision from the Postal Rate Commission before implementing a change in postal rates and fees or classifications (29 U.S.C. §§ 3622-23). The Postal Rate Commission issues its rate or classification decision after giving interested parties an opportunity for a public hearing in compliance with 5 U.S.C. §§ 556-57. The Commission forwards its decisions, in accordance with 39 U.S.C. § 3624, to the Governors of the Postal Service for final action. The Governors, under varying requirements, may approve, allow under protest, reject, or modify a Commission decision. This rulemaking deals only with the Commission's jurisdiction over classification changes.

From the time the Postal Service took over the functions of the Post Office Department in 1971, it presumed that it had authority to conduct marketplace experiments (experimental changes services, fees, classification, or required mail preparation) without requesting a recommended decision from the Postal Rate Commission.

On August 7, 1979, the Court of Appeals for the Third Circuit held that the Postal Service must come to the Postal Rate Commission for a recommended decision before conducting any marketplace experiment which includes a change in the rates any mailer pays, or the classification of any mail (*United Parcel Service v. USPS*, No. 78-2390 (3d Cir. Aug. 7, 1979)).

The Postal Rate Commission designed its current rules of procedure (39 CFR 3001.1-3001.116) with a view toward recommending decisions on proposals for permanent postal rates and

classifications. The rules require the Postal Service to provide in writing the detailed information necessary if the mailing public is to participate meaningfully in Commission proceedings. This information also is necessary for the Commission to fulfill its statutory duties, described in 39 U.S.C. §§ 3622(b) and 3623(c), in recommending changes in rates and classification.

The current rules may not be suited for Postal Service requests for authority to conduct experiments. A substantial amount of the information required by the rules may not be available because it may be the very information the Postal Service seeks to acquire through the experiment. Any change in the rules will attempt to bring into better balance the right of the public to participate—by becoming a party or a limited intervenor, or offering comments—in the proceedings to decide if proposed experiments are appropriate and the need for the Postal Service to obtain expeditious consideration of its proposed experiments from the Postal Rate Commission.

Alternatives Under Consideration

The Commission held a conference on possible rulemaking on this subject on September 26, 1979 to explore potential solutions to the perceived problem. Six parties submitted written comments. On July 17, 1980, the Commission issued an NPRM which was published in the *Federal Register* (45 FR 48663, July 21, 1980). Four parties have submitted written comments in response to the NPRM. The parties who have taken part in the proceedings are: Officer of the Commission; United Parcel Service; Purolator Courier Corporation, *et al.*; Mail Order Association of America; American Bankers Association; National Association of Greeting Card Publishers; Time Incorporated; the United States Postal Service; and Fingerhut Corporation. The alternatives that the Commission is considering are:

(A) No change in the rules of procedure. The Postal Service would be required to provide all the information in accordance with the current rules unless it requested and received a waiver from the Commission (39 CFR 3001.22). Parties who regularly take part in Commission proceedings are familiar with the current rules and should have no problem dealing with waiver motions. The Commission's rules of procedure, however, were not designed for use with experimental proposals. The waiver procedure may be unduly time-consuming and repetitious. Additionally, the Commission may be able to design rules that permit it to

consider experimental proposals more expeditiously.

(B) The rules in the NPRM provide for a procedure to identify, at the beginning of the proceeding, the issues not requiring a trial-type hearing. Also, they specify that if there is a satisfactory explanation for the absence of information normally required, that absence could not be used as an argument against approving the experiment. The proposed rules require that the Postal Service's proposal include a description of the data-collection efforts the Postal Service intends to use. The proposed rules also call for a self-imposed deadline of 150 days for the Commission to issue its decision on the proposed experiment. The proposed changes are intended to streamline the necessary procedure.

(C) The Postal Service believes that the procedural rules governing experiments should be more streamlined than the Commission's proposed rules. The Postal Service proposes that the rules require the Postal Service only to describe the experimental offering and present a range of rates to be tested, along with reasonable cost estimates. No discovery (written questions parties direct to the Postal Service before the hearing) would be permitted and the Commission could hold hearings only on questions concerning the cost estimates. These rules would give the Postal Service considerable flexibility in conducting experiments, but would severely limit the public's participation in the decisionmaking. Eliminating discovery could increase the time spent in hearings, since discovery tends to reduce the number of issues and clarify parties' positions and allows much cross-examination in written form rather than by oral questioning. Limiting hearings to the issue of cost estimation would expedite the proceedings. However, the statute (39 U.S.C. §§ 3622-23) requires the Commission to consider other factors such as "the establishment and maintenance of a fair and equitable schedule" and "the desirability of special classifications from the point of view of both the user and of the Postal Service."

(D) The Officer of the Commission (OOC), who represents the interests of the general public in the Commission proceedings, offered some additional sections for the proposed rules; these additions concern duration, flexibility, data collection, and termination. The OOC's proposed rules require the Postal Service's request to include the time period for conducting the experiment. The OOC-proposed rules permit the Postal Service to request and receive a

recommended decision for an experiment whose rates, services, and requirements vary within specified limits. These rules would require the Postal Service to submit monthly reports on the data collection. The OOC also proposed that at the end of the authorized experimental period, the Postal Service must file a request to make the experiment a permanent service offering, or to extend the experiment, or to notify the Commission and all parties that it does not intend to offer the experimental service after its authorization period expires. Furthermore, the rules would require the Postal Service to file a motion if it wanted to terminate the experiment early. These rules, unlike the current rules, are designed specifically to regulate Postal Service experiments. They would require the Postal Service to keep interested parties informed of the results of the experiment as well as the Postal Service's intentions regarding the service offerings.

(E) United Parcel Service (UPS) supports the rules in the NPRM, but offers three additions. First, UPS believes that the rules should forbid the Postal Service to conduct any experiment for longer than 2 years to prevent the Postal Service from using its authority to experiment as a substitute for requesting the Commission to recommend a permanent change, and to minimize any harmful effects to the Postal Service or others that the experiment might have. Second, UPS supported rules to permit the Commission to order the experiment modified or terminated if the Commission believes such an action to be in the best interest of the Postal Service or the public. Third, UPS suggests the rules contain an explicit statement that the Commission's approval of an experiment does not imply that the Commission is in favor of adopting a permanent change. The UPS suggestions would tend to involve the Commission in the experiment to a greater degree, and thus limit the Postal Service's flexibility. This greater involvement would allow more public participation, because interested parties who opposed the experiment would have the opportunity of asking the Commission to order the Postal Service to end it.

(F) The American Bankers Association (ABA) supports the rules proposed by the Commission, but suggests three changes. Under the ABA's proposal, the Postal Service could change different aspects (such as price) of the experimental service after notifying the Commission. The public

could comment on the changes and the Commission could order the changes stopped. The ABA also proposes that the Commission require the Postal Service to report on the experiment at set intervals, and that the Commission keep the record open during the experiment, so that it can include the reports and suggestions submitted by the public. The ABA believes that, with the additions it proposes, the rules governing requests for experiments would prevent delays in the implementation of experiments while protecting the public's rights.

(G) In its comments responding to the NPRM, Fingerhut Corporation, which does a large amount of mail order business, states that the procedures concerning proposals for experiments should work as expeditiously as possible. Fingerhut is concerned that a party who opposes a particular experiment may be able to make the proceeding unduly burdensome and time-consuming. To promote a more expeditious procedure, Fingerhut suggests that the Commission's self-imposed deadline be shortened by 30 days. In fashioning a new set of rules, the Commission is attempting to make the procedure as expeditious as possible while allowing the public its right to participate meaningfully. Fingerhut's proposals would promote expedition but would reduce the ability of the public to participate in the decisionmaking.

The Commission is considering the comments that the parties have submitted to determine if the suggested modifications or additions would result in a set of rules best suited to the goal of expediting proceedings on experiments while affording the public its right to participate meaningfully.

Summary of Benefits

Sectors Affected: United States Postal Service; the Postal Rate Commission; and the mailing public.

Rules designed specifically for the expeditious consideration of proposed experiments should assist the Postal Service in developing new services and improving current ones to meet the needs of the mailing public. Rules expediting procedures for Commission consideration of experiments should encourage the Postal Service to propose more experiments than it might under the current rules, with the resulting benefit that the Postal Service can move more quickly to offer the public innovative services. The rules should help the Commission and interested parties focus on the factors that are important for an experiment, without having to make a case-by-case,

repetitious identification of what is important in considering a permanent change, but not an experiment.

The Commission tries to issue a decision on a proposed permanent classification change within 10 months of the day it is filed. This time period is the same as the statute, 39 U.S.C. § 3624(c)(1), gives the Commission to consider Postal Service requests for permanent changes in rates, but is not a mandatory one. Under the proposed rules, the Commission has set a 120-day (4 month) deadline for itself. The Commission believes that the rules will assist it in considering experimental proposals with the greater expedition that the limited character of experimental proposals makes possible.

Special rules for experimental proposals should enable the parties to participate in a more meaningful way by focusing the proceedings only on the important issues, eliminating effort spent on issues important in a permanent change but not in an experiment. The Commission should be able to consider the cases more expeditiously. Additionally, the opportunity for interested parties to participate in the decisionmaking for experiments should give the Postal Service valuable insight and information concerning mailers' needs. The Postal Service may be better able to take parties' suggestions into consideration, as the rules attempt to focus attention on the aspects of the case in which the parties' suggestions can be most helpful. The parties may suggest improvements in the proposed experiments that otherwise would not have been considered.

Adoption of special rules for consideration of proposals for experiments may result in lower costs of regulation. If the Postal Service had to follow the current rules, which were designed for types of cases other than experimental proposals, it is possible that the Postal Service and the other participants would expend resources on issues that need not be explored in considering a proposal for an experiment. Our proposed rules are designed to eliminate such unnecessary expenditures by streamlining the proceedings for experimental cases.

Summary of Costs

Sectors Affected: None.

We do not expect the proposed rules to impose any cost burdens, beyond those that may occur because simpler procedures may result in an increase in the number of experimental proceedings the Commission will consider. The fact that only one regulated entity (the Postal

Service) is involved, however, tends to set a natural limit on the number of additional proceedings that might occur. The cost of dealing with increased number of applications will be far outweighed by time and resources saved under this new proposal by all interested parties, including the PRC.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

Final Rules—To be adopted after consideration of comments received in response to NPRM (45 FR 48663, July 21, 1980).

Public Hearing—To be determined.

Regulatory Analysis—The PRC, as an independent agency, is not required to prepare a Regulatory Analysis as it is defined under E.O. 12044.

However, the PRC prepares essentially the same information in its NPRMs and final rules.

Available Documents

NPRM—45 FR 48663, July 21, 1980.

The transcript of the September 26, 1979 conference and the comments that parties have filed on Possible Rulemaking and in response to the NPRM on USPS Experimental Services (Docket No. RM80-2) are available by contacting the Commission's Docket Room, 2000 L Street, N.W., Room 500, Washington, DC 20268, (202) 254-3800. Documents may be inspected in the Commission's reading room. Copies of documents issued by the Commission or filed by the OOC are available without charge. Copies of all other public documents are available for 15¢ per page. Copies may be requested by mail or telephone.

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PRC

Postal Rate Commission Docket—E-COM Forms of Acceptance, 1980

Legal Authority

Postal Reorganization Act, 39 U.S.C. §§ 3621-23.

Reason for Including This Entry

This case may have a national effect because it will be an investigation into

possible ways to make the Postal Service's planned new service offering, E-COM (Electronic Computer Originated Mail), available to more mailers. It is possible that the decision in this case may provide an opportunity for the Postal Service and large volume mailers to increase their productivity without causing any adverse effects.

Statement of Problem

The Postal Service is preparing to offer a service, E-COM, in which large volume mailers can have messages electronically transmitted from their computers to specially equipped post offices. At these post offices, the Postal Service will convert the electronic messages to printed documents that the Postal Service will put in envelopes and deliver. After reviewing new and developing technologies, the Postal Service had decided that electronic mail was an important way of offering innovative service and lowering costs to mailers.

The Postal Service filed a proposal for the Commission's consideration. The Postal Service intended to contract with a single commercial telecommunications carrier, to provide all the transmission and data processing services involved when mailers used the E-COM service. The Commission, while agreeing with the Postal Service's decision to enter the market for electronic mail, recommended an alternative plan in which various private firms can compete for the business of transmitting the electronic messages from customers to 25 specially equipped post offices, where the data processing, printing, and enveloping would be done. On August 15, 1980, the Governors of the Postal Service accepted the E-COM system the Commission recommended.

The Postal Rate Commission (PRC), believes that the alternative it recommended and the Postal Service accepted would foster competition in telecommunications, provide technically superior service at a lower cost, and eliminate a potential jurisdictional overlap with the Federal Communications Commission (FCC). The FCC has jurisdiction over telecommunications carriers. Under the Postal Service's original proposal, the FCC believed that the Service would become a telecommunications carrier under FCC's jurisdiction. The E-COM system the PRC recommended and the Governors of the Postal Service approved is consistent with the Administration policy to involve the Postal Service in electronic mail and to preserve a competitive telecommunications market.

At the time the Governors accepted the Commission's design for E-COM, however, they instructed the Postal Service to present, as soon as possible, evidence to the Commission supporting two additional methods for mailers to use in entering electronic mail into the postal system—two methods that mailers could use to enter their mail into the E-COM system without purchasing telecommunications service from one of the various firms that will offer it. The Governors want to permit (1) mailers to enter electronic mail by presenting magnetic tapes over-the-counter at the specially equipped post offices, and (2) direct connection to those post offices by mailers who have their own telecommunication systems.

Consideration of these two additional methods of entry will not delay the Postal Service's implementation of its E-COM service offering. To facilitate consideration of the matter, the PRC instituted Docket No. MC80-1 shortly after the Governors first suggested the two alternative entry methods, in anticipation of the Postal Service's filing. The institution of Docket No. MC80-1 gives notice to interested parties that the Commission will expeditiously consider the proposal to add two other methods of entry for E-COM mail. The parties therefore have additional time to assess their positions and decide whether to intervene and what to present.

Alternatives Under Consideration

At this stage of the case, before the Postal Service has filed its proposal, only a general outline of the issues to be considered is clear. After the Postal Service has filed its proposal, interested parties will have an opportunity to offer modifications to the two forms of entry under consideration, as well as any related proposals—possibly including additional methods for entry. The alternatives we are considering are:

(A) No change in the forms of entry. The system would operate as described in our opinion in Docket No. MC 78-3. Every mailer who wanted to use E-COM would have to use the services of a carrier. The Postal Service can implement E-COM service without the additional methods of entry. These two methods were not explored in Docket No. MC 78-3; therefore, neither the Postal Service nor the Commission can estimate how many mailers would use the additional methods if they were available and what the cost to the Postal Service and mailers would be.

(B) The Governors of the Postal Service want the methods of entry expanded to include presentation of magnetic tapes in specified post offices

and direct connection of telecommunication systems owned by mailers. According to the Governors, this expansion of the methods of entry into the E-COM system could reduce mailers' costs. Additionally, mailers who might not use the E-COM service if they had to purchase telecommunication service might decide to use E-COM if the additional methods of entry are available.

Summary of Benefits

Sectors Affected: USPS; large volume mailers and recipients of that mail; and the telecommunications industry.

The exploration of these possible modifications should reveal whether improvements can be made in methods of entry into the E-COM system. The availability of additional ways to enter messages into the E-COM system might decrease costs to mailers who take advantage of them, and might make electronic mail available to more mailers. Competition might be enhanced because the telecommunication carriers would be competing against these alternatives as well as each other. The Postal Service would benefit if the additional entry methods increased the volume of E-COM mail without increasing the Postal Service's costs. Recipients of E-COM mail might benefit if the alternative methods reduced mailers' costs, because the recipients will often be consumers of the goods and services produced by the mailers and anything that serves to hold down the mailers' costs will tend to stabilize the prices charged consumers. Possible benefits may have to be weighed against potential increases in costs to the Postal Service, which might result if extra equipment or personnel are needed to deploy the new forms of entry. These are the issues that the Commission will consider in the case.

Summary of Costs

Sectors Affected: USPS; and large value mailers and recipients of that mail.

If the alternative methods are adopted, the Postal Service will have to pay for an employee to accept computer tapes over-the-counter and perform the operations necessary to convert the messages from the tapes into printed words on paper. Large volume mailers who took advantage of either alternative form of entry would have to pay the cost of putting their messages into a form that the Postal Service's E-COM system can accept. Because recipients will often be consumers of the goods and services produced by the mailer, those recipients probably will bear the costs involved

when they pay for the goods and services.

At this time, the Commission cannot estimate the impact that this case will have on costs. The Commission anticipates that the Postal Service will present evidence on its costs to accept electronic mail under the two additional methods and that mailers desiring to use the additional methods of entry will present evidence concerning their costs.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

When the Postal Service files its proposal, the Commission will issue a schedule for the expeditious consideration of this case.

Public Hearing—The Commission will hold public hearings in compliance with 5 U.S.C. §§ 556–57.

NPRM—To be determined, contingent upon Postal Service's filing of proposal.

Public Comments—Will be invited in NPRM.

Regulatory Analysis—The Postal Rate Commission, as an independent agency, here engaged in formal rulemaking on the record, is not required to prepare a Regulatory Analysis as it is defined under E.O. 12044. However the Postal Rate Commission presents essentially the same information in its decisions.

Available Documents

As the following documents are filed with the Commission or issued by it during the course of the proceedings, they will be available from the Commission's Docket Room, 2000 L Street, N.W., Room 500, Washington, DC 20268, (202) 254–3800.

Commission Order No. 339 instituting the proceeding in MC80–1 and the Notice sent to the *Federal Register*, published at 45 FR 37571, June 3, 1980.

Transcripts of Hearings, as well as Testimony, Exhibits, Workpapers, Library References/Studies, Interrogatories and Answers, and Requests for Oral Cross-Examination and Written Cross-Examination for Docket MC80–1.

Commission Orders and Notices; Presiding Officer's Orders, Ruling, Motions and Notices, Petitions for Leave to Intervene and Requests for Limited Participation; and Commission's Recommended Decision for Docket MC80–1.

Documents may be inspected in the Commission's reading room. Copies of

documents issued by the Commission or filed by the OOC are available without charge. Copies of all other public documents are available for 15 cents per page.

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PRC

Postal Rate Commission Docket R80–1—Postal Rate and Fee Changes, 1980

Legal Authority

Postal Reorganization Act, 39 U.S.C. §§ 3621–23.

Reason for Including This Entry

This case is important because it may result in changes in every postal rate and fee charged the mailing public. The Postal Service estimates that its proposed changes would increase its revenues by \$3.75 billion in the 12-month period from March 21, 1981 to March 20, 1982.

Statement of Problem

On April 21, 1980, the United States Postal Service (USPS) filed with the Postal Rate Commission (PRC) Docket No. R80–1, a request for a recommended decision on its proposed changes in postal rates and fees, together with proposals for certain changes in mail classification. The Postal Service says that unless the PRC recommends the proposed changes in postal rates and fees, the Service will suffer a deficit of \$4.9 billion in the 12-month period from March 21, 1981 to March 20, 1982.

In addition to rate and fee increases—and certain decreases for some mail given special preference by Congress—the Postal Service proposes a number of changes in the way rates are structured and mail is classified.

The public hearings on the Postal Service's case began on July 8, 1980. Participants filed their evidence on August 13, 1980 and hearings on those cases began on October 6, 1980. Parties filed rebuttal testimony on November 6, 1980, and the hearings on those filings began on November 13, 1980. In addition to the Postal Service, more than 50 other parties are taking part in the case.

Alternatives Under Consideration

Parties in this case have advanced various alternatives. Some of the highlights of some of the alternatives are as follows:

(A) The percentage rate increases the Postal Service proposes for the various major categories of mail service are approximately as follows:

First-class (includes letter mail)—33.3 percent (increase from 15¢ to 20¢ for the first ounce).

Second-class (regular) (magazines and newspapers)—1.9 percent (increase in average rate paid per piece from 10.2¢ to 10.4¢).

Third-class bulk rate (regular)—17.7 percent (increase in average rate paid per piece from 8.5¢ to 9.5¢).

Fourth-class parcel post—8.4 percent (increase in average rate paid per piece from \$2.12 to \$2.34).

Fourth-class special-rate (for books, records, and tapes)—0.6 percent (increase in average rate paid per piece from 112.8¢ to 113.4¢).

Included with the Postal Service's request are various proposals affecting mailing practices. The proposed rate structure includes a 3-cent discount for mailers who presort first-class mail by ZIP codes, and a 4-cent discount for mailers who presort to the carrier route on which the mail will be delivered. Mailers who presort post cards to ZIP codes or carrier routes will receive discounts of 1 and 2 cents, respectively.

Other highlights of the proposed rate structure include a merger for rate purposes of the controlled circulation category of publications with regular second-class mail so that mailers of both categories of publications would pay the same rates. (Second-class is for periodicals that have paying subscribers. Controlled circulation can be used with periodicals that do not have paying subscribers, such as trade journals sent without charge to the recipient.) The Postal Service proposes an additional parcel post zone (a distance bracket within which mail of the same weight and class is charged the same; for example, zone 3 is 150 to 300 miles) for parcels mailed and to be delivered within the service area of the same Bulk Mail Center, (the central point in the area to which parcels are sent for processing); and a reduction of rates for lockbox rentals in small post offices where neither rural nor city delivery service is provided.

Additionally, the proposed rate structure and associated classification changes would eliminate some fees now required of mailers of presorted bulk first-class; create an additional zone for express mail and make return receipts available with it; charge an additional fee, of 20¢ or 60¢ depending on destination, for parcel post not compatible with Postal service processing machines; and make insurance optional with registered mail.

(B) The American Bankers Association (ABA) suggests a discount for presort to the first three numbers of the ZIP codes. ABA says the minimum number of pieces of first-class mail necessary to qualify for the presort discount should be lowered from the current 500 to 400. The rate for each ounce over the first should be 5¢ less than the rate for the first ounce. Fees for caller service (the recipient picks up his or her mail at the post office window) should be \$5.00 per year and lockbox fees should be reduced 50 percent because mail would take up post office space anyway.

(C) American Business Press (ABP) supports the Postal Service's proposal to eliminate the controlled circulation class and make it a part of second-class. According to ABP, this change will simplify the rate structure and make the presort discount now available to second-class also available to publishers using controlled circulation. Expansion of the presort discount would result in more worksharing and cost savings to both mailers and the Postal Service. ABP proposes that the expeditious delivery treatment now given time-sensitive publications such as newspapers be available to all publications willing to pay a fee of 1.1¢ per piece in addition to the rate for the regular delivery service provided to second-class. ABP offers an alternative zone rate schedule with lower rates than the Postal Service proposed for zones 4 through 8.

(D) The American Retail Federation (ARF) proposes that the discount for first-class mail presorted by ZIP codes be increased to 5¢ with an additional 1¢ discount for first-class mail presorted to the carrier route on which the mail will be delivered.

(E) Associated Third Class Mail Users (ATCMU) says that businesses, especially small businesses, would have great difficulty in adjusting to the increase proposed for third-class. ATCMU believes that businesses could cope with postal increases—even frequent ones—more easily if the increases were smaller. ATCMU proposes that the increase for third-class bulk be 23 percent instead of the 30 percent proposed by the Postal Service. To support the lower rate, ATCMU believes the Commission should reduce the Postal Service's revenue requirement by eliminating the costs for what it believes are non-essential items, including Saturday delivery and the next day delivery standard for some non-local first-class mail.

(F) The Association of American Publishers, Inc. (AAP) supports the Postal Service's proposed increases for

fourth-class. AAP suggests redistributing costs from special rate fourth-class (book rate) to parcel post because of competitive necessity, since parcel post rates inevitably will be higher than UPS's.

(G) The Bank Stationers Association (BSA) opposes the requested increases for fourth-class. Additionally, it proposes that the rate structure for third-class bulk be changed from a minimum per piece and per pound schedule to a per piece and per pound schedule. With a minimum per piece and per pound schedule, first the total charge at the pound rates is computed. Then this charge is divided by the number of pieces in the mailing, and if the result is less than the minimum per piece rate, the minimum per piece rate is applied to each piece in the mailing. The result is that any mailing with pieces weighing under 3.42 ounces (at proposed rates) will pay the same postage regardless of whether they are 0.5 ounces or 3.4 ounces, or any weight in between. In fact, the Postal Service's Domestic Mail Manual indicates that total postage is computed twice—once at minimum per piece rates and once at pound rates, and the higher postage prevails. With a per piece, per pound rate schedule, postage would be computed by multiplying the number of pieces by the per piece charge and adding that figure to the charge for the number of pounds in the mailing.

(H) The Council of Public Utility Mailers (CPUM) proposes a different rate schedule for presorted first-class: for letters presorted to ZIP codes—15¢ for the first ounce and 13¢ for each additional ounce; for letters presorted to carrier route—13.8¢ for the first ounce and 13¢ for each additional ounce; for cards presorted to ZIP codes—11¢; and for cards presorted to carrier route—9.8¢.

(I) The Council to Save the Post Card wants the Commission to refuse approval of any increase in the postage rate for cards, leaving it at 10¢.

(J) Dow Jones & Company, Inc. proposes that the Commission recommend establishing a daily newspaper subclass. It believes the cost of delivering daily newspapers is considerably less than for the other second-class mailings.

(K) The Department of Defense (DOD) opposes the Postal Service's proposed increases in the fees DOD pays for parcels delivered to overseas military personnel. DOD says that while it does not oppose the merger of controlled circulation into second-class, all publications now qualifying for controlled circulation should qualify for second-class after the merger.

(L) Growers & Shippers League of Florida (GSLF) says that parcel post rates should not include the 3¢ per pound charge designed to reflect nontransportation costs (such as costs for sorting to post office which will deliver the parcel) because handling costs do not vary with weight. GSLF opposes any constraint against lowering rates for higher weight parcels, saying that is intra-class subsidization; that is, heavier parcels are paying more than their fair share of costs for all of parcel post. GSLF opposes a surcharge for parcels not compatible with the Postal Service's processing machines.

(M) The International Labor Press Association (AFL-CIO/CLC) proposes a 1¢ discount for nonprofit publications if the mailer presorts to carrier route and a 0.7¢ discount if the mailer presorts to ZIP codes.

(N) The Magazine Publishers Association (MPA) opposes the method the Postal Service used to distribute the cost of unused space in vehicles transporting mail and offers an alternative method of allocating these costs. MPA further contends that second-class mail is more sensitive to rate increases than the Postal Service has taken into account.

(O) The Mail Order Association of America (MOAA) believes that the cost coverage (i.e., share of non-traceable costs added to the traceable costs to arrive at a rate) the Postal Service proposes for third-class is too high and the Commission should lower it. MOAA proposes that the rate schedule for third-class have separate rates for catalogs because of different cost characteristics. MOAA further proposes that the rate schedule for third-class have a per piece and per pound charge rather than the current minimum per piece and per pound charge. MOAA says that the Postal Service's proposed rates for fourth-class bound printed matter are too high and recommends that they be lowered.

(P) The March of Dimes Birth Defects Foundation, *et al.* proposes modifications to the Postal Service's distribution of costs to the various types of mail. March of Dimes supports a three-tier structure for third-class, with different rates for mail presorted to carrier route, presorted to ZIP codes, and "all other." March of Dimes proposes that the rate for third-class mail presorted to carrier route be lower than the Postal Service proposes in order to encourage worksharing.

(Q) The National Association of Greeting Card Publishers (NAGCP) proposes that a single percentage be used to compute the mark-up of all the classes' contributions to institutional

costs. This modification would relieve first-class of the disproportionate amount of institutional costs—those costs which cannot be traced directly or indirectly to any specific class of mail—NAGCP believes it is paying. NAGCP also opposes some of the methods the Postal Service uses to allocate costs.

(R) The National Association of Letter Carriers, AFL-CIO (NALC) generally supports the Postal Service's proposal as justified by inflation. NALC contends that the Commission should recompute or order the Postal Service to recompute the projection of labor costs in order to ensure that the Service has made adequate provisions for labor costs.

(S) The National Newspaper Association proposes a 1¢ per piece discount for within-county second-class mail (those copies delivered within the county of publication) and limited circulation (publications mailing fewer than 5,000 copies outside the county of publication) presorted to carrier route.

(T) Newsweek, Inc. proposes increases in the discount for presorting second-class mail and it opposes the Postal Service's method of distributing the cost of unused space in vehicles transporting mail.

(U) The Officer of the Commission (OOC), who represents the interests of the general public in Commission proceedings, presents an alternative costing methodology based on data provided by the Postal Service and OOC adjustments. According to the OOC, his costing methodology is superior to the Postal Service's because it is based on fairness, while the Postal Service's is based on demand control (marginal costing). The OOC proposes different methods of attributing some costs. Additionally, the OOC suggests a per piece and per pound rate structure for third-class to replace the current minimum per piece and per pound structure. The OOC proposes a rate of 18¢ for the first ounce of first-class mail. The rates he proposes for the other classes are, in general, higher than those proposed by the Postal Service. The OOC supports the Postal Service's proposal to merge controlled circulation and second-class, but asserts that the rates should be higher for publications that currently are controlled circulation than for those currently second-class. The OOC also proposes that the Commission recommend a new subclass for first-class mail—sealed cards. The sealed cards would pay a rate lower than letters but higher than post cards. A sealed card is a standardized card or sheet folded and sealed, with the message written on the inner sides. No enclosures would be allowed, and

weight would be limited to one half ounce.

(V) The Parcel Shippers Association (PSA) supports the new intra-bulk mail center rates proposed by the Postal Service. PSA suggests fourth-class rates lower than the Postal Service proposed to enable the Postal Service to challenge UPS's strong position in the parcel market.

(W) The Reader's Digest Association recommends reducing the Postal Service's revenue requirements by lowering the provision for contingencies (expenses which the Postal Service can neither foresee nor prevent), eliminating recovery of prior year losses, reducing the estimate for the cost of workers' compensation, and increasing the estimate of productivity to take into account the increasing amounts of easier-to-handle presorted mail. Reader's Digest further proposes that mailers (such as newspaper publishers) who want expeditious handling for second-class pay 2.16¢ more per piece than mailers who are willing to accept slower delivery standards. Reader's Digest proposes that the second-class rate schedule include a new zone similar to the local zone in the parcel post rate schedule.

(X) Reuben H. Donnelley Corporation proposes that the rate for third-class bulk mail presorted to carrier route be reduced from the current 6.7¢ per piece to 6.4¢ because of the great sensitivity this mail has to price, the availability of substitute delivery, and the low value of the service to the mailer.

(Y) Tide-Mar, Inc. supports lowering the minimum number of first-class pieces a mailer must have to qualify for the presort discount from 500 to 10. Tide-Mar also suggests that the Commission recommend eliminating the annual fee that mailers of presorted first-class pay.

(Z) United Parcel Service (UPS) opposes the proposed intra-bulk mail center rates because they do not vary with distance. UPS believes implementation would decrease revenues while increasing costs because dropshippers (mailers who provide some of the transportation for their mail and therefore enter it closer to the place of delivery) would shorten the length of their hauls, taking shipments only to just inside the Bulk Mail Center area. UPS proposes parcel post rates higher than those proposed by the Postal Service. According to UPS, parcel post rates should be raised at least 22 percent for all parcels. Rate for bound printed matter and special-rate fourth-class also should be increased by about that percentage.

(AA) Warshawsky and Co. supports the adoption of a per piece and per

pound rate structure for third-class and recommends a 16.8¢ per pound charge with a per piece charge of 6.7¢ for mailings presorted to carrier route, 7.7¢ for mailings presorted to ZIP codes, and 9.3¢ for "all other."

Parties in the proceeding include: United States Postal Service; Ad-A-Day Company, Inc.; Agricultural Publishers Association, Inc.; American Bankers Association; American Business Press, Inc.; American Newspaper Publishers Association; American Retail Federation; Associated Third Class Mail Users; Association of American Publishers, Inc.; Association of Independent Clinical Publications, Inc.; Association of Second Class Mail Publishers, Inc.; Bank Stationers Association; CarCross Company, Inc.; Classroom Publishers Association; Columbia Gas System; Council of Public Utility Mailers; Council to Save The Post Card; Department of Defense; Direct Mail/Marketing Association, Inc.; Dow Jones & Company, Inc.; Envelope Manufacturers Association; Fingerhut Corporation; Growers and Shippers League of Florida and Florida Gift Fruit Shippers Association; International Labor Press Association (AFL-CIO/CLC); Magazine Publishers Association, Inc.; Mail Advertising Service Association (International), Inc.; Mail Order Association of America; March of Dimes Birth Defects Foundation; Meredith Corporation; National Association of Advertising Publishers; National Association of Catalog Showroom Merchandisers; National Association of Greeting Card Publishers; National Association of Letter Carriers, AFL-CIO; National Newspaper Association; Newsweek, Inc.; Parcel Shippers Association; J. C. Penney Company, Inc.; Samuel Pennington; The Reader's Digest Association, Inc.; The Recording Industry Association of America, Inc.; Spiegel, Inc.; Time-Critical Shipment Committee; Time Incorporated; United Parcel Service; Warshawsky & Co.; Officer of the Commission; Tide-Mar, Inc.; McGraw-Hill, Inc.; Reuben H. Donnelley Corporation; Crest Fruit Company; Pittman & Davis, Inc.; Texas Gift Packing & Shippers, Inc. and Alamo Fruit; American Lung Association; Kathleen M. Conkey; Council on Wage and Price Stability; Printing Industries of America, Inc.; National Easter Seal Society for Crippled Children and Adults, *et al.*

Summary of Benefits

Sectors Affected: United States Postal Service; and the mailing public.

The rate and fee schedules that the Commission will recommend will adjust rates so that the Postal Service's revenues, together with appropriations, as nearly as practicable equal its expenses, as 39 U.S.C. § 3621 directs. The Postal Service says that its proposed rate and fee changes should increase its revenues by approximately \$3.75 billion, in the 12-month period from March 21, 1981 to March 20, 1982. This \$3.75 billion represents 15.5 percent of the total revenue the Postal Service expects to receive during that 12-month period. Any change in rates and fees that the Commission recommends must be in accordance with the factors listed in 39 U.S.C. § 3622(b). Any change in mail classification that the Commission recommends must be in accordance with the factors listed in 39 U.S.C. § 3623(c).

The Postal Service believes that an additional zone in the rate schedule for Express Mail and a new zone for parcel post to be delivered within the delivery area of the bulk mail center will allocate costs more accurately; that is, mail causing lower costs to the Postal Service will be reflected in lower postage rates to the mailer. Additionally, the Postal Service believes that the elimination of certain fees currently required with presorted bulk first-class mail will encourage more mailers to presort, to the benefit of both the mailers, through lower rates, and the Postal Service, through reduced processing of the mail before delivery. Specific reduced costs and the mailers who would benefit are listed for each proposal under the "Alternatives Under Consideration" section. The Commission will consider the merits of these proposals and those that other parties have advanced.

Summary of Costs

Sectors Affected: The mailing public; and recipients of mail.

The Postal Service estimates that its proposal would increase postal revenues by \$3.75 billion. Increases in rates must be paid by users of the mails; businesses may pass along higher postal costs to their customers in higher prices for the goods and services they provide. The Commission cannot estimate the economic effect of this case any more specifically until all the evidence is on the record, and it has made its analysis.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

The following is a tentative schedule:

Initial Briefs filed—December 19, 1980.

Reply Briefs filed—January 5, 1981.

Oral Argument—January 8, 1981.

Commission Opinion and

Recommended Decision—Mid-February 1981.

Regulatory Analysis—The Postal Rate Commission, as an independent agency, here engaged in formal rulemaking on the record, is not required to prepare a Regulatory Analysis as it is defined under E.O. 12044. However, the Postal Rate Commission presents essentially the same information in its decisions.

Available Documents

The following documents will be available as they are filed with the Commission or issued by it during the course of the proceedings. Please contact the Commission's Docket Room, 2000 L Street, N.W., Room 500, Washington, DC 20268, (202) 254-3800.

Commission Order No. 332 instituting the proceeding in R80-1 and the Notice sent to the *Federal Register*, published at 45 FR 28552, April 29, 1980.

Transcripts of Hearings, as well as Testimony, Exhibits, Workpapers, Library References/Studies, Interrogatories and Answers, and Requests for Oral Cross-Examination and Written Cross-Examination for Docket R80-1.

Commission Orders and Notices; Presiding Officer's Orders, Rulings, Motions, and Notices; Petitions for Leave to Intervene and Requests for Limited Participation; and Commission's Recommended Decision for Docket R80-1.

Documents may be inspected in the Commission's reading room. Copies of documents issued by the Commission or filed by the OOC are available without charge. Copies of all other public documents are available for 15¢ per page.

Agency Contact

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INDEX I—SECTORS AFFECTED BY REGULATORY ACTION

This index graphically presents those sectors of our society that are most likely to benefit from or incur the costs of the regulations described in this edition of the *Calendar*. The information noted here corresponds to that provided by the agencies in the "Summary of Costs" and "Summary of Benefits" sections of each entry. The index presents the regulations alphabetically, by agency, by unit within the agency, and then by title of the regulation. For additional information on the effects of the regulation, the reader should refer to the specific *Calendar* entry.

A reader who is interested in a particular industry or group can easily identify those regulations that have a major impact on that industry or group. The reader should locate the relevant "Affected Industries" or "Other Affected Sectors" heading and scan the columns within them to locate the specific industry or other sector in which he or she is interested. For each entry, the reader can then see the agency issuing the regulation, the title of the regulation affecting the sectors of interest, and the page number on which the regulation appears in the *Calendar*.

Similarly, a reader who is interested in a particular regulation can identify the activities and groups that the particular regulation will affect significantly.

This index highlights two types of regulatory impacts: (1) direct impacts on industries and other sectors that are required to take a specific action or that will receive a direct or immediate benefit as a result of a regulation; and (2) indirect impacts on sectors that are important suppliers, or customers of the directly regulated or benefited sector, or important providers of substitute products.

For each regulation, we first identify the major industrial sectors affected. The terminology we use in the Affected Industries section of the index corresponds, where possible, to standard SIC nomenclature (Standard Industrial Classification Manual, published by OMB, 1972 edition with 1977 supplement, available from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock Nos. 041-001-00066-6 and 003-005-00176-0, respectively). The SIC Manual defines industries in accordance with the composition and structure of the economy, and covers the entire field of economic activities. The SIC classifies industries by major division, and further classifies them within divisions by using multiple digit codes.

The specific categories within the Affected Industries section correspond to the major SIC industrial divisions. Where an impact will probably be felt throughout a major industrial division, we name that major division (i.e., Agriculture, Mining, Construction, Manufacturing, etc.). Where a regulation will affect only a particular type of establishment within a division, we use a more specific SIC level (i.e., Livestock Production, Coal Mining, Building Construction, Petroleum Refining, etc.). Below is a brief explanation of each major industrial division.

Agriculture, Forestry, Fishing

This division includes establishments primarily engaged in agricultural production of crops, seeds, livestock and dairy products, and related agricultural services; forestry; and commercial fishing (including shellfish and marine products). Manufacturing and processing of agricultural products away from the farm and packaging of fish are classified under Manufacturing.

Mining

This division includes establishments primarily engaged in metal and nonmetallic mineral mining, coal mining and processing, oil and gas extraction, and related mining services. Manufacturing and processing of agricultural products away from the farm, packaging of fish, petroleum refining and smelting, and refining of metal are classified under Manufacturing. Natural gas transmission is classified under Electric, Gas, and Sanitary Services, and pipeline transportation of petroleum is listed under Transportation.

Construction

This category includes establishments and contractors primarily engaged in construction. Construction includes new work, additions, alterations, and repairs. Three broad types of construction activity are covered: (1) building construction by general contractors or builders primarily engaged in construction of buildings for sale on their own account rather than as contractors; (2) heavy construction, such as highways, streets, cemeteries, mines, dams and water projects, sewage collection, treatment and disposal facilities, hydroelectric plant construction, and irrigation projects; and (3) construction by special trade contractors, such as painting, carpentry, and electric work, including establishments primarily engaged in the sale and installation of communication equipment and insulation material.

Manufacturing

This division includes establishments engaged in the mechanical or chemical transformation of materials or substances into new products. The materials processed by manufacturing establishments include products of agriculture, forestry, fishing, mining, and quarrying, as well as products of other manufacturing establishments. This division includes milk processing and bottling, fish packaging, smelting and refining of metal, and shipbuilding.

Transportation, Communications, and Electric, Gas, and Sanitary Services

This division includes establishments providing to the general public or to other business enterprises passenger and freight transportation; communication services; utilities such as electricity, gas, steam, and water or sanitary services; and the U.S. Postal Service.

Trade

This division covers both wholesale and retail trade. In addition, we have specifically identified impacts on the exporting and importing operations of wholesale and retail establishments. Wholesale trade includes establishments or places of business primarily engaged in selling merchandise to retailers, to industrial, commercial, institutional, farm or professional business users, or to other wholesalers; and businesses acting as agents or brokers in buying merchandise for or selling merchandise to such persons or companies. Retail trade includes establishments engaged in selling merchandise for personal or household consumption, and rendering services incidental to the sale of goods. Impacts highlighted include increases or decreases in demand for goods or services traded, as well as passthrough costs from suppliers to wholesalers and retailers.

Finance, Insurance, Real Estate

This division includes establishments operating primarily in the fields of finance, insurance, and real estate. Finance includes banks, trust companies, credit agencies other than banks, investment companies, brokers and dealers in securities and commodity contracts, and security and commodity exchanges. Insurance covers carriers of all types of insurance, and all insurance agents and brokers. Real estate includes owners, lessors, lessees, buyers, sellers, agents, and developers of real estate.

Other Services

This division includes establishments primarily engaged in providing a wide variety of services for individuals, business and government establishments, and other organizations. Included are health services; accounting, architectural, legal, engineering, and other professional services; educational institutions; business, repair; and recreational services; and membership organizations. Not included are services closely related to a particular industry, such as agriculture, mining, transportation, etc., which are noted in their respective categories.

All- or Multi-Industry Industry

This category identifies regulations having (1) an "across-the-board" impact on all sectors of the economy, or (2) an impact which affects several industries and cannot be adequately identified with SIC terminology. Examples of the latter include regulations affecting industries producing a particular pollutant; using a particular manufactured product, raw material, or energy source; employing a particular minority group; or subject to a particular law. For some regulations having this kind of cross-industry impact, we also identify specific industries within the general group which will be significantly affected. For example, in the case of a regulation restricting the production of asbestos products, we (1) record "Other Industries Using Asbestos Products" in the All- or Multi-Industry Impact column, and (2) record "Construction" in the Construction column, because that industry is the major industrial user of asbestos products.

After highlighting industrial sectors affected, we next record impacts on governmental, social, geographic, and other sectors. A brief explanation of each of these "Other Affected Sectors" follows.

State, Local Government

This category identifies regulations significantly affecting State and local governments. We highlight regulations in this category which directly regulate a State or local government function, involve State or local government in implementation, or preempt a State law or regulation.

Some State and local governments engage in operations not traditionally considered "governmental" in nature (such as State-owned liquor stores). Impacts on such operations are recorded in the appropriate category of the Industries Affected section of the index (i.e., any impact on State-owned liquor stores is included in the listing "Retail of Liquor" under the Wholesale and Retail Trade column. Such impacts are not noted in the State, Local Government category.

Population Groups

We use this category to highlight impacts on various population groups, including groups defined by age, income, health status, type of employment, ethnicity, and living environment.

We also use this column to highlight regulations which the agencies identify as having a special or significant impact on consumers. Regulations identified include proposals aimed at providing safer and better quality consumer goods and services, as well as proposed actions which might raise prices or decrease the quality or quantity of consumer goods and services.

This category also identifies proposed actions which impact the general public. This term encompasses general improvements to the quality of life, including upgrading the environment, encouraging the development of energy sources, curbing inflation, and improving the balance of trade.

Geographic Areas

In this category, we identify those areas of the country particularly affected by a regulation, such as specific States (as physical regions rather than political units), rural, urban or other regions, Indian lands, public lands, and national parks.

Small Business

In this category we identify those regulations which have special impacts on the small business community as a whole, as well as on small businesses within specific industries. Notations in this category encompass a variety of impacts, including Small Business Administration proposals aimed at directly benefitting the small business community, proposals which might adversely affect small businesses, and regulations which are structured to meet both the special needs and the special limitations of small businesses.

Innovative Regulatory Techniques Considered

The Innovative Techniques category, which is included in the *Calendar* for the first time, is the final column in our index. This category highlights regulations which agencies are considering implementing by using innovative, market-oriented techniques. These techniques are departures from traditional "command and control" regulation, which involves strictly specified rules and formal government sanctions for failure to comply. Instead, innovative techniques involve the use of private ingenuity and the economic forces of the market place to develop better long-term solutions to regulatory problems. These techniques include:

- Enhanced competition: achieving needed regulatory goals more efficiently by adjusting market structure to enhance competition—often through removing regulatory and other barriers to competition.
- Marketable rights: allowing Government-conferred rights to be exchanged by private parties, eliminating the need for detailed Government involvement in their allocation.
- Economic incentives: structuring fees or subsidies (rather than Government-enforced standards) that encourage private sector achievement of regulatory goals.
- Performance standards: replacing regulations that specify the means of compliance (usually detailed design standards) with more general standards. These standards are based on desired overall performance levels—leaving regulated firms free to find the most efficient means of compliance.
- Information disclosure: replacing direct regulation with programs to give customers informed freedom of choice among products and services.
- Voluntary standard setting: negotiating voluntary rules with industry groups that pledge to adopt them, subject to regulatory agency review or audit.
- Compliance reform: creating market-oriented substitutes for Federal compliance inspections, including such devices as government-licensed private auditors, consumer deputies, third-party inspections, self-reporting, whistle blower programs, and noncompliance penalties.
- Tiering: setting less demanding standards or exempting business institutions based on their size or nature of the organization.

The remaining paragraphs provide an overview of the sectors that may be most significantly affected by regulations described in this edition of the *Calendar*. We present industrial impacts by major SIC Division; where appropriate, we also present data for particular industries within the major Divisions. We only tabulated impacts when they were industry-specific; we did not include other all- or multi-industry impacts in the tabulations we present below. Because our goal is to present an overview rather than a detailed analysis, we limited the information we present here to direct impacts and *significant* indirect impacts.

Of the 182 regulations appearing in the *Calendar*, approximately one-half affect Manufacturing (91). Within the Manufacturing Division, regulatory impacts are most frequent on chemical manufacturing (30), primary metal industries (28), manufacture of transportation equipment (28), and petroleum refining (29).

Trade industries are affected by 41 regulations, with wholesale and retail establishments each being affected by 21 regulations. A substantial number of regulations also affect Service industries (32), with 13 affecting various membership organizations, 10 affecting health services, and 9 involving other business services. Thirty-four regulations affect Transportation, 31 regulations affect Construction, and 24 affect Mining.

Of the 22 regulations affecting the Finance sector, 22 affect banking and 15 affect credit agencies (which include savings and loans). Electric, Gas, and Sanitary Services are affected by 29 regulations, with a majority affecting electric and gas services. The Divisions affected least are Agriculture (11); Communications (9); Real Estate (8); and Insurance (4). This edition of the *Calendar* contains no regulations with direct or significant indirect impacts on Forestry.

Of the 99 regulations affecting consumers, 33 deal with health and safety issues, and 32 address other types of consumer protection. Over half of these regulations affect the consumers of manufactured products. Of the 38 regulations that affect employees, 16 affect manufacturing workers. Other population groups affected are minorities (9); children (8); and the elderly (4). Over two-thirds of the regulations have direct or significant indirect effects on the general public. A total of 62 regulations have a general affect on State governments and 21 will affect local governments.

A total of 90 of the 182 entries discuss implementation of various innovative regulatory techniques. The techniques most often mentioned are performance standards (23); tiering (34); enhanced competition (12); and information disclosure (12).

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USDA-AMS	Amendments to Federal Seed Act Regulations	77924	Seed Production, Farmers Using Seed						Wholesale, Retail and Importing of Seed		Seed Testing Laboratories; Seed Labeling services	State Seed Regulatory and Certifying Agencies				
USDA-AMS	Regulatory Treatment of Reconstituted Milk in All Federal Milk Marketing Orders	77926														
USDA-FSOS	Proposed Net Weight Regulations	77928						Meat, Poultry	Wholesale and Retail Meat and Poultry			State and Local Net Weight Standards	Consumers of Meat and Poultry			
USDA-FSOS	Proposed Polychlorinated Biphenyls (PCBs) Regulation - Existing Equipment	77806					Meat, Poultry, Egg Products		Wholesale and Retail Meat, Poultry and Egg Products				Consumers of Meat, Poultry and egg Products			
USDA-SCS	Watershed Protection and Flood Prevention Program	77747	Agriculture	Watershed Structures, such as Dams								State and Local Government Sponsoring Watershed Projects	People Living in Watershed Project Areas			
DOC-MARAQ	Construction-Differential Subsidy Repayment; Total Repayment Policy	77931			Shipbuilding	Deep Sea Foreign and Domestic Transportation						Shippers of Goods by Deep Sea Transportation Business Users of These Goods	Consumers of Goods Shipped by Deep Sea Transportation, the General Public		Tiering	

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DOC-NOAA	Regulations Implementing a Fishery Management Plan for the Groundfish Fishery for the Bering Sea/Aleutian Island Area	77748	Fishing			Fish Processing		Exporting of Fish Products				Alaska	Consumers of Groundfish; the General Public; Alaska	Small Business	
DOC-NOAA	Regulations Implementing a Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, United States Waters	77751	Fishing			Fish Processing							Consumers of Shrimp; Recreational Fishermen; the General Public	Small Business	
DOC-NOAA	Regulations on the Mining of Deep Seabed Hard Mineral Resources	77753		Mining of Copper Ores and Ferrous Alloy Metal Mining Services		Primary Metal Industries							The General Public; the West Coast		Performance Standards
DOC-NOAA	Regulations on the Construction, Location, Ownership, and Operation of Ocean Thermal Energy Conversion (OTEC) Facilities and Plants	77710		Oil and Gas Extraction	Power Plant Construction	Shipbuilding and Repairing; Electric Equipment; Energy-intensive Products such as Ammonia, Fertilizer, and Aluminum; Petroleum Refining; Nuclear Fuel	Electric Services; Ocean Thermal Energy Production	Wholesale of Natural Gas; Petroleum and Nuclear Fuel					The General Public; SE, Gulf Coast, Virgin Islands, Puerto Rico, Hawaii, and the Pacific Islands	Small Business	Performance Standards; Compliance Reform

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ED-OCR	77898	Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Education, Effectuation of Title VI of the Civil Rights Act of 1964									State and Local Education Agencies	Limited-English-Proficient Students		
ED-OESE	77901	Financial Assistance to Local and State Agencies to Meet Special Educational Needs; and Financial Assistance to Local Educational Agencies for Children with Special Educational Needs									State and Local Education Agencies	Educationally Deprived Students, and Their Parents, Teachers, and Other Education Employees		
DOECS	77712	Commercial and Apartment Conservation Service Program					Electric and Gas Services	Retail of Home Heating Oil	Commercial Buildings, Apartment Buildings	Occupants of Commercial Buildings	State Energy Programs	Apartment Dwellers, the General Public		Information Disclosure
DOECS	77714	Emergency Building Temperature Restrictions							Commercial Buildings	Occupants of Commercial Buildings	State Energy Programs	The General Public		Performance Standards
DOECS	77715	Energy Conservation program for Consumer Products Other Than Automobiles										Consumers of Major Household Appliances, the General Public		Tiering, Performance Standards

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AGENCY	TITLE OF REGULATION	PAGE NO.			Building Construction	Construction Materials	Electric Services, Waste Resource Recovery Facilities, Transportation Industries	Wholesale of Waste processing equipment	Investment, Banking, Underwriting	Engineering	Other Commercial Users of Electricity and Petroleum Products, Other Industries Producing Solid Waste and Dry Sewage Sludge	State and Local Energy Programs	Building Workers, Occupants of New Residential Housing, the General Public	Performance Standards
DOE-CS	Energy Performance Standards for New Buildings	77717			Municipal Waste Resource Recovery Facilities	All Manufacturing, Waste Processing, Equipment	Electric Services, Waste Resource Recovery Facilities, Transportation Industries	Wholesale of Waste processing equipment	Investment, Banking, Underwriting	Engineering	Other Commercial Users of Electricity and Petroleum Products, Other Industries Producing Solid Waste and Dry Sewage Sludge	State and Local Energy Programs	Building Workers, Occupants of New Residential Housing, the General Public	Performance Standards
DOE-CS	Federal Price Support Loan Program for Energy from Municipal Waste Resource Recovery Facilities	77718												Economic Incentives, Tying
DOE-CS	Standby Federal Emergency Conservation Plan	77719												Voluntary Standards
DOE-ERA	Amendments to Puerto Rican Naphtha Entitlements Regulations	77721												

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DOE-ERA	Crude Oil Resales Pricing Revisions	77722				All Manufacturing, Petroleum Refining	Transportation Industries	Wholesale of Crude Oil			Other Commercial Users of Petroleum Products		Consumers of Petroleum Products			
DOE-ERA	Domestic Crude Oil Entitlements	77723				All Manufacturing, Petroleum Refining	Transportation Industries	Wholesale and Retail of Petroleum Products			Other Commercial Users of Petroleum Products		Consumers of Petroleum Products			
DOE-ERA	Gasohol Marketing Regulations	77724				Gasohol, Ethanol, Unleaded Gasoline	Transportation Industries	Wholesale and Retail of Gasohol and Unleaded Gasoline			Other Commercial Users of Gasohol		Consumers of Gasohol; the General Public; the Midwest		Enhanced Competition	
DOE-ERA	Maximum Lawful Price for Unleaded Gasoline	77726				Unleaded Gasoline	Transportation Industries	Wholesale and Retail of Unleaded Gasoline			Other Commercial Users of Unleaded Gasoline		Consumers of Unleaded Gasoline; the General Public		Economic Incentive	
DOE-ERA	Motor Gasoline Allocation Regulations Revisions	77727				Gasoline	Transportation Industries	Wholesale and Retail of Gasoline			Other Commercial Users of Gasoline	State Energy Programs	Consumers of Gasoline; Urban Areas		Tiering	
DOE-ERA	Motor Gasoline - Downward Certification	77729				Gasoline	Transportation Industries	Wholesale and Retail of Gasoline			Other Commercial Users of Gasoline		Consumers of Gasoline			
DOE-ERA	Natural Gas Curtailment Priorities for Interstate Pipelines	77730				Manufacturing	Natural Gas Transmission and Distribution				Other Commercial Users of Natural Gas and Electricity		Consumers of Natural Gas and Electricity; the General Public		Tiering	

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DOE-ERA	77733 Powerplant and Industrial Fuel Use Act of 1978; Cogeneration Exemption						Industrial and Electric Power-plant Cogenerators						The General Public		
DOE-RA	77734 Outer Continental Shelf (OCS) Sequential Bidding Regulations			Oil and Gas Extraction							Companies Bidding for OCS Leases		The General Public; the Outer Continental Shelf		Enhanced Competition
DOE-RA	77736 Proposed Regulations Establishing Alternative Bidding Systems for Coal Lease Sales			Coal Mining							Companies Bidding for Coal Leases		The General Public	Small Business	Marketable Rights; Enhanced Competition
HHS-FDA	77807 Abbreviated New Drug Applications for New Drugs Approved After October 10, 1962, for Human Use						Pharmaceutical Preparations, Particularly Generic Drugs					State Drug Purchasing Programs	Consumers of Pharmaceutical Preparations		
HHS-FDA	77808 Chemical Compounds Used in Food-Producing Animals; Criteria and Procedures for Evaluating Assays for Carcinogenic Residues		Livestock and Poultry Production			Veterinary Pharmaceuticals							Consumers of Meat and Poultry		

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HHS-FDA	77810 Current Good Manufacturing Practice Relating to Poisonous and Deleterious Substances in Food, Feed, and Food-Packaging Materials Plants; Polychlorinated Biphenyls (PCBs)		Livestock Production		Transformers and Capacitors; Food and Kindred Products Other Than Meat, Poultry and Egg Products; Food-Packaging Materials		Warehousing of Food and Feeds					Consumers of Food and Kindred Products Other Than Meat, Poultry and Egg Products; the General Public			Information Disclosure; Voluntary Standards
HHS-FDA	77813 Food Labeling Initiatives				Food and Kindred Products, Other Than Meat and Poultry							Consumers of Food and Kindred Products Other Than Meat and Poultry; the General Public			
HHS-HCFA	77814 Conditions of Participation for Skilled Nursing Facilities and Intermediate Care Facilities								Skilled Nursing and Personal Care Facilities		State Health Agencies and Health Certification Personnel	Patients and Staff of Skilled Nursing and Personal Care Facilities			
HHS-HCFA	77816 Consolidation of Survey and Certification Requirements for Medicare and Medicaid								Health Services		State Health and Social Services Departments	Consumers of Health Services			Tiering

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AGENCY	TITLE OF REGULATION	PAGE NO.	AGRICULTURE, FORESTRY, FISHING	MINING	CONSTRUCTION	MANUFACTURING	TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES	WHOLESALE AND RETAIL TRADE	FINANCE, INSURANCE, REAL ESTATE	OTHER SERVICES	ALL OR MULTI-INDUSTRY	STATE LOCAL GOVERNMENT	POPULATION GROUPS: GEOGRAPHIC AREAS	SMALL BUSINESS	INNOVATIVE REGULATORY TECHNIQUES CONSIDERED		
HHS-HCFA	77818 Life Safety Code in Hospitals, Nursing Facilities, and Intermediate Care Facilities				Fire Prevention Equipment				Life and Fire Insurance Industries	Hospitals, Nursing and Personal Care Facilities, Health Professions, Membership Organizations			Patients in Hospitals, SNFS, and ICFS		Performance Standards		
HHS-HCFA	77819 Uniform Reporting Systems for Health Services Facilities and Organizations									Health Services Facilities and Practitioners			People in Need of Health Services		Tiering		
HUD-FHA	77902 Coinsurance for Private Mortgage Lenders (New Construction)				Residential Building Contractors				Savings and Loan and Banking Industries, Low and Moderate Income Housing, Rental Housing Developers				Occupants of Low and Moderate Income Housing; the General Public				
HUD-HOUS	77903 Minimum Property Standards for One- and Two-Family Dwellings				Residential Building Contractors				Minimum Standard Housing, Housing Developers, the Mortgage Banking Industry			Local Building Codes	Occupants of Minimum Standard Housing, Construction Workers				
HUD-NVACP	77821 Lead-Based Paint - Chewable Surfaces				Painting Contractors				Public and HUD-Assisted Housing			State and Local Public Housing Authorities	Occupants of Public and HUD-Assisted Housing, Particularly Children				

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HUD-OS	Solar Energy and Energy Conservation Bank	77737			Building Contractors	Solar Energy Equipment			Banking, Industry, Credit Agencies, and Residential, Commercial Non-manufacturing, and Agricultural Buildings				Occupants of Residential, Commercial, Non-manufacturing, and Agricultural cultural buildings, the General Public.		Economic Incentives
DOI-HCRS	Uniform Rules and Regulations for the Protection and Conservation of Archaeological Resources Located on Public and Indian Lands	77755							Archaeological Activities				Native Americans, Collectors and Treasure Hunters, the General Public, Indian Lands, Particularly in the 13 Western States		
DOI-NPS	Right-of-way Regulations	77757					Communications Services, Electric, Gas and Sanitary Services			Other Establishments Requesting Rights-of-Way Across National Parks	State and Local Governments Requesting Rights-of-Way Across National Parks				
DOI-OSM	Definition: "Surface Coal Mining Operations" and "Coal-Processing Plant"	77759		Coal-Processing Plants							State Coal Regulatory Authorities	People Living Near Coal-Processing Plants, the General Public	Small Business		

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DOI-OSM	Discharge from Mine Areas: Revision of Standards for Effluent Limits and Sedimentation Ponds	77760		Coal Mining							Business Users of Downstream Water		Consumers of Downstream Water, the General Public		Tiering	
DOI-WPRS	Rules and Regulations for Acreage Limitation Under Federal Reclamation Law	77762	Agriculture				Irrigation						17 Western States	Small Business	Tiering; Economic Incentives	
DOJ-CRD	Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs	77904								DOJ: Funded Programs and Activities			Minorities, Handicapped, Women, General Public			
DOJ-CRD	Regulations Prohibiting Discrimination on the Basis of Age in Federally Assisted Programs	77905								DOJ: Funded Programs and Activities		State and Local Law Enforcement Agencies	Employees of and Participants in DOJ-Funded Programs and Activities			
DOJ-CRD	Regulations Prohibiting Discrimination on the Basis of Sex in Education and Training Programs Receiving Federal Financial Assistance	77905								DOJ: Funded Programs and Activities		State and Local Law Enforcement and Correction Agencies	Employees of and Participants in DOJ-Funded Programs and Activities			
DOJ-INS	Admission of Refugees and Asylum Procedures	77906								Charitable Organizations Involved With Refugee Relief		State and Local Refugee Programs	Refugees, the General Public			

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AGENCY	TITLE OF REGULATION	PAGE NO.	DOJ-INS Employment Authorization	77907							Charitable Organizations	Industries Employing Aliens	State and Local	Aliens, the General Public			
DOJ-OJARS -LEAA	Equal Service Evaluation Guidelines	77908											State and Local Criminal Justice Agencies	The General Public, Particularly Inmates, Probationers, Parolees and Juvenile Delinquents			
DOL-ESA	Sex Discrimination Guidelines Employee Benefits	77910										Federal Contractors		Employees of Federal Contractors and Federally-Assisted Construction Contractors			
DOL-LMSA -PWBP	Definition of Plan Assets and Establishment of Trust	77911									Investment Management, Including the Banking and Insurance Industries	Labor Organizations Sponsoring Employee Benefit Plans	Industries Sponsoring Benefit Plans	Participants and Beneficiaries of Employee Benefit Plans	Small Business		
DOL-LMSA -PWBP	Individual Benefit Reporting and Recordkeeping for Multiple Employer Plans	77912									Investment Management, Including the Banking and Insurance Industries	Labor Organizations Sponsoring Multiple Employer Pension Plans	Industries Sponsoring Multiple Employer Pension Plans	Participants and Beneficiaries of Multiple Employer Pension Plans			Tiering

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DOL-LMSA-PWB8	77913 Individual Benefit Reporting and Recordkeeping for Single Employer Plans										Investment Management, Including the Banking and Insurance Industries	Labor Organizations Sponsoring Single Employer Pension Plans	Industries Sponsoring Single Employer Pension Plans		Participants and Beneficiaries of Single Employer Pension Plans	Small Business	Tiering
DOL-MSHA	77822 Mandatory Safety Standards for Surface Coal Mines and Surface Areas of Underground Coal Mines			Coal Mining								Labor Organizations Representing Coal Miners			Coal Miners	Small Business	
DOL-MSHA	77823 Regulations Setting Forth Requirements for Safety and Health Training for Mine Construction Workers			Mining	Mine Construction										Mine Construction Workers, Miners	Small Business	
DOL-MSHA	77824 Requirements for Construction and Maintenance of Impounding Structures and Tailings Piles at Metal and Nonmetal Mines			Metal and Nonmetal Mining	Construction of Impounding Structures							Labor Organizations Representing Metal and Nonmetal Miners		State and Local	Metal and Nonmetal Miners, People Living Near Metal and Nonmetal Mines, the General Public	Small Business	Tiering
DOL-MSHA	77825 Review of Safety and Health Standards Applicable to Metal and Nonmetal Mining and Milling Operations			Metal and Nonmetal Mining											Metal and Nonmetal Miners	Small Business	

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DOL-MSHA	77826 Safety and Health Standards for Construction Work at All Surface Mines and Surface Areas of Underground Mines			Mining	Mine Construction						Labor Organizations Representing Miners			Mine Construction Workers; Miners	Small Business	
DOL-OSHA	77827 Generic Standard for Occupational Exposure to Pesticides During Manufacture and Formulation		Agriculture			Pesticides								Workers in the Pesticides Manufacturing Industry; Consumers of Pesticides		Performance Standards; Tiering; Compliance Reform
DOL-OSHA	77829 Identification and Labeling of Hazardous Materials in the Workplace		Agriculture			Chemical Manufacturing Establishments using Hazardous Chemicals								Workers Exposed to Hazardous Chemicals; Consumers of Products Containing or Produced with Hazardous Chemicals		Information Disclosure
DOL-OSHA	77831 Occupational Noise Exposure Hearing-Conservation Amendment					Manufacturing Industries	Electric, Gas and Sanitary Services						State Occupational Health Programs; State Industrial Programs	Workers in Manufacturing Industries; Electric, Gas and Sanitary Services; and Government Industrial Jobs		Tiering

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DOL-OSHA	77833 OSHA General Industry Standard for Walking and Working Surfaces, and Construction Safety Standards for Ladders and Scaffolding, Floor and Wall Openings, and Stairways				Construction	Manufacturing Industries Using Abrasive Blasting	Railroads				General Industry		Workers in Construction and General Industry	Small Business		Performance Standards
DOL-OSHA	77835 Regulations for Reducing Safety and Health Hazards in Abrasive Blasting Operations			Construction	Construction								Abrasive Blasters and Associated Workers			
DOL-OSHA	77837 Safety and Health Regulations for Locking Out and Tagging Energy Sources in General Industry and in Construction			Construction	Construction						Machinery and Process Systems Users in General Industry, Commercial Users of Construction and General Industry Products	CA, MI and WA Safety and Health Regulations	Workers in Construction and General Industry Consumers of These Industries' Products			Performance Standards
DOL-OSHA	77838 Safety and Health Standard for Conveyors										General Industry		State Occupational Health Programs	Workers in General Industry		Performance Standards

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DOL-OSHA	Standard for Occupational Exposure to Asbestos	77840		Construction	Primary Asbestos Products; Shipbuilding; Asbestos Substitutes			Auto, mobile Dealers; Gasoline Stations			Auto, mobile Repair	Other Industries Using Asbestos Products	Workers in Industries Producing or Using Asbestos Products; Consumers of Asbestos Products; the General Public	Workers in Industries Producing or Using Asbestos Products; the General Public		Tiering
DOL-OSHA	Standard for Occupational Exposure to Chromium	77842			Chromium Products; Chromium Substitutes							Industries Using Chromium Products	Workers Exposed to Chromium; the General Public			Tiering
DOL-OSHA	Standard for Occupational Exposure to Safety and Health Hazards in Grain Handling Facilities	77844	Grain Handling Facilities; Grain Producers; Grain Users		Grain Products			Wholesale and Retail of Grain and Grain Products					Workers in Grain Handling Facilities and Wholesale Grain Establishments; Consumers of Grain Products	Workers in Grain Handling Facilities and Wholesale Grain Establishments; Consumers of Grain Products	Small Business	Performance Standards: Tiering
DOT-FAA	Flammability Standards for Crewmember Uniforms	77846			Textile Mill Products and Apparel; Cotton Textile Products	Air Transportation							Air Passenger, Air Carrier, Crew members			Performance Standards

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AGENCY	TITLE OF REGULATION	PAGE NO.																											
DOT-FHWA	Buy America Requirements	77933			Highway Construction	Domestic Steel Industry		Steel Importing				Engineering Services										State Highway Construction Programs	Users of Highways; the General Public					Tiering	Voluntary Standards; Performance Standards
DOT-FHWA	Design Standards for Highways - Geometric Design Standards for Resurfacing, Rehabilitation, and Rehabilitation (RRR) of Streets and Highways Other Than Freeways	77964			Highway Construction	Highway Construction Materials																State and Local Street and Highway Construction Programs	Users of Highways; the General Public						
DOT-FHWA	Hours of Service of Drivers	77847*						Interstate Trucking and Busing															Users of Highways; Consumers of Goods Shipped by Truck and Bus						
DOT-FHWA	Minimum Cab Space Dimensions	77848				Truck Cabs		Interstate Trucking															Users of Highways; Consumers of Goods Shipped by Truck					Tiering	
DOT-FRA	Alerting Lights Display - Locomotives	77849						Railroad															Users of Highways; Railroad Passengers; Consumers of Goods Shipped by Rail						
DOT-NHTSA	Crashworthiness Ratings	77850				Passenger Cars																	Purchasers of New Passenger Cars						Information Disclosure

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DOT-NHTSA	77738 Fuel Economy Standards for Model Year 1983-85 Light Trucks		Petroleum Production			Light Trucks and Parts and Materials Used in Their Production; Petroleum Refining	Trucking and Busing				Commercial Users of New Light Trucks	State and Local	Consumers of New Light Trucks		Performance Standards	
DOT-NHTSA	77851 Heavy Duty Vehicle Brake Systems		Agriculture			Trucks; Buses; Tractor-Tailers; Braking Systems					Other Commercial Users of Trucks, Buses, and Tractor-Tailers		Users of Highways; Purchasers of Trucks and Tractor-Tailers; the General Public		Performance Standards	
DOT-NHTSA	77852 Pedestrian Protection					Passenger Cars and Parts; Materials Used in Their Production		Body Repair Shops			Commercial Users of Passenger Cars		Pedestrians; Consumers of Passenger Cars		Performance Standards	
DOT-OST	77965 Special Air Traffic Rules and Airport Traffic Patterns						Air Carriers						Air Passengers; Small communities		Marketable Rights; Enhanced Competition; Tiering	
DOT-USCG	77853 Construction and Equipment for Existing Self-Propelled Vessels Carrying Bulk Liquefied Gases					All Manufacturing; Liquid Cargo Vessels	Water Transportation of Bulk Liquefied Gas; Utilities and Transportation Industries				Other Commercial Users of Bulk Liquefied Gas		The Marine Environment; the General Public; Consumers of Bulk Liquefied Gas			

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DOT-USCG	77763 Construction Standards for the Prevention of Pollution from New Tank Barges Due to Accidental Hull Damage; and Regulatory Action to Reduce Pollution from Existing Tank Barges Due to Accidental Hull Damage					All Manufacturing; Tank Barges	Water Transportation of Oil Tank Barges; Marine Towing; Utilities and Transportation Industries				Other Commercial Users of Oil		The Aquatic Environment; the General Public; Consumers of Oil			
TREAS-ATF	77934 Accelerated Payment of Certain Tobacco Products Excise Taxes		Tobacco			Tobacco Products						State and Local	Consumers of Tobacco Products	Small Business	Tiering	
TREAS-ATF	77935 Delivery of Certain Alcohol and Tobacco Products Excise Tax Payments via Electronic Fund Transfer		Tobacco			Distilled Spirits; Malt Beverages; Wines; Tobacco Products						State and Local	Consumers of Distilled Spirits, Malt Beverages, Wine, and Tobacco Products			
TREAS-ATF	77937 Implementation of the Distilled Spirits Tax Revision Act of 1979					Distilled Spirits; Brandy; Wine; Alcoholic Flavorings		Importing of Distilled Spirits, Wine, and Brandy								
TREAS-ATF	77938 Labeling and Advertising Regulations Under the Federal Alcohol Administration Act					Alcoholic Beverages		Wholesale and Retail of Alcoholic Beverages		Advertising Industry		States Which Have Adopted the Federal Alcohol Administration Act	Consumers of Alcoholic Beverages		Enhanced Competition	

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TREAS.-CUSTOMS	Accelerated Duty Payment	77940						Importing; Custom-house Brokerage Services						Small Business		
TREAS.-CUSTOMS	Administrative Rulings	77942						International Trade Community								
TREAS.-CUSTOMS	Civil Aircraft Regulations	77943				Civil Aircraft and Parts, Domestic and Foreign	Air Transportation	Wholesale, Retail, and Importing of Civil Aircraft and Parts	Domestic and Foreign Repair of Civil Aircraft and Parts	Other Commercial Users of Civil Aircraft and Parts			Consumers of Civil Aircraft and Parts; the General Public			
TREAS.-CUSTOMS	Importation of Motor Vehicles and Motor Vehicle Engines Under the Clean Air Act	77944					Passenger Transportation by Taxicab, Bus or Charter Service			Other Industries Owning Fleet Vehicles, Such as Taxicabs and Buses			Individuals Importing Motor Vehicles and Engines			
TREAS.-CUSTOMS	Interest Charges on Delinquent Accounts	77945				Manufacturers Importing Intermediate materials		Importing Community	Surety Insurance Industry							
TREAS.-CUSTOMS	Valuation of Imported Merchandise for Customs Purposes	77946						U.S. Import and Export; Customhouse Brokerage Services					The General Public			

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TREAS-OCC	Adjustable-Rate Mortgages	77782							National Banking Industry			Business Customers and Shareholders of National Banks	State Regulation of Adjustable Rate Mortgages	Customers and Shareholders of National Banks		Enhanced Competition
TREAS-OCC	Description of Office, Procedures, Public Information; Supplemental Application Procedures; Assessment of Fees; National Banks; District of Columbia Banks; Employee Stock Option and Stock Purchase Plans; Changes in Capital Structure; Change in Bank Control; Federal Branches and Agencies of Foreign Banks; Policy Statements	77783							National Banking Industry			Business Customers and Shareholders of National Banks		Customers and Shareholders of National Banks; the General Public		Enhanced Competition
TREAS-OCC	Lending Limits; Unimpaired Surplus Fund	77785							National Banking Industry			Business Customers of National Banks	State and Local Governments Doing Business with National Banks	Customers of National Banks; the General Public; Rural Areas		
TREAS-OCC	Use of Data processing Equipment and Furnishing of Data Processing Services	77787							National Banking Industry		Data Processing	Business Customers of National Banks		Customers of National Banks; the General Public		

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EPA-OANR	77854 Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High-Level and Transur- anic Radioactive Wastes					Manufac- turing Industries	Commer- cial Nuclear Power Plants				Other Commer- cial Users of Electricity Produced by Nuclear Power		Consum- ers of Elec- tricity Produced by Nuclear Power; the General Public		Performance Standards	
EPA-OANR	77855 Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer			Mining of Minerals and Radioac- tive Metals		Petroleum Refining; Chemical; Radioac- tive Materials					Other Industries Emitting Carcino- genic Sub- stances; Commer- cial Users of Products Of Indust- ries Emitting Carcino- genic Sub- stances	State and Local Air Pollution Control	The General Public; Consum- ers of Products of Indust- ries Emitting Carcino- genic Sub- stances; Urban Areas; Adverse Coastal, WV and Northern NJ		Performance Standards;	
EPA-OANR	77765 Regulations for the Prevention of Significant Deterioration (PSD) from Set II Pollutants (Hydrocarbons, Carbon Monox- ide, Nitrogen Oxide, Ozone, and Lead)					Manufac- turing Industries Emitting Set II Pollutants, Particular- ly Petroleum Refining and Primary Metal Industries	Transpor- tation Industries; Electric Services				Other Industries Emitting Set II Pollutants	State Air Pollution Control	The General Public		Performance Standards; Economic Incentives;	

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EPA-OANR	Remedial Action Standards for Inactive Uranium Processing Sites	77857										AZ, CO, ID, NM, ND, OR, TX, PA, UT, and WY	People Living or Working Near Inactive Uranium Mill Tailings Sites in Affected States; People Living or Working near Uranium Contaminated Buildings; the General Public		
EPA-OANR	Review, and Possible Revision, of the National Ambient Air Quality Standard for Carbon Monoxide	77766				Motor Vehicles and Equipment						State and Local Transportation Programs; State Air Pollution Control Agencies	Persons with Cardiovascular or Pulmonary Disease; Pregnant Women and Fetuses; Anemics; the Driving Public		

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EPA-OANR	77768 Review, and Possible Revision, of the National Ambient Air Quality Standard for Nitrogen Dioxide		Agriculture			Manufacturing Industries Emitting Nitrogen Oxides; Motor Vehicles and Equipment	Electric Services; Natural Gas Pipelines				Other Industries Emitting Nitrogen Oxides	State Air Pollution Control	The General Public, Particularly Persons Suffering From Respiratory Disease; The Aquatic Ecosystem		
EPA-OANR	77769 Review, and Possible Revision, of the National Ambient Air Quality Standards for Particulate Matter			Coal Mining		Non-Ferrous Metal Industry; Petroleum Refining	Electric, Gas and Sanitary Services				Other Industries Emitting Particulate Matter, Including Industries Supplying or Using Large Quantities of Fossil Fuel	State Air Pollution Control	The General Public, Particularly Children and People with Respiratory and Cardiovascular Diseases		Tiering
EPA-OANR	77770 Review, and Possible Revision, of the National Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide)		Agriculture	Coal Mining		Non-ferrous Metal Industry; Petroleum Refining	Electric, Gas and Sanitary Services				Other Industries Emitting Sulfur Dioxides, Including Industries Supplying or Using Large Quantities of Fossil Fuel	State Air Pollution Control	The General Public, Particularly Children and People with Respiratory Diseases		

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EPA-OANR	Standards of Performance to Control Atmospheric Emissions from Industrial Boilers	77771				Manufacturing Industries particularly Glass, Pulp and Paper, and Chemical	Trucking; Passenger Transportation by taxicab, Bus or Charter Service				Commercial Users of Manufactured Products, Particularly Glass, Pulp and Paper, and Chemicals		The General Public; Consumer of Manufactured Products, Particularly Glass, Pulp and Paper, and Chemicals			
EPA-OANR -OMSAPC	Fuels and Fuel Additives	77860				Petroleum Refining					Other Commercial Users of Motor Vehicles		People who Live Near or Work in Plants Producing Fuels and Additives; Users of Motor Vehicles; the General Public; Urban Areas	Small Business	Tiering	
EPA-OANR -OMSAPC	Gaseous Emission Regulations for 1985 and Later Model Year Light-Duty Trucks and Heavy-Duty Engines	77772	Agriculture		Construction	Heavy-Duty Engines and Light-Duty Trucks	Trucking; Busing				Other Commercial Users of Heavy-Duty Engines and Vehicles and Light-Duty Trucks		The General Public, Particularly Urban Populations and People with Respiratory Disease; Consumers of Heavy-Duty Vehicles and Light-Duty Trucks	Small Business	Performance Standards	

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EPA-OA-NR -OMSAPC	77773	Heavy-Duty Diesel Particulate Regulations	Agriculture	Construction	Heavy-Duty Diesel Engines and Vehicles	Trucking; Busing				Other Commercial Users of Heavy-Duty Diesel Engines and Vehicles	States with Areas in Violation of the National Ambient Air Quality Standard for Particulate Matter	The General Public, Particularly People with Respiratory Disease, and Urban Populations; Consumers of Heavy-Duty Diesel Vehicles		
EPA-OPTS	77861	Chemical Hazard Warning Labels			Manufacturing Industries Producing or Using Hazardous Chemicals	Importing of Chemicals				Other Industries using Hazardous Chemicals		Workers Exposed to Hazardous Chemicals		Information Disclosure
EPA-OPTS	77863	Chloromethane and Chlorinated Benzene Proposed Test Rule; Amendment to Proposed Health Effects Standards		Welding; Painting	Chloromethane; Chlorinated Benzenes; Other Chemical Products Produced with These Chemicals			Testing Laboratories; Welding				Workers Exposed to Chloromethane and Chlorinated Benzenes; Consumers of Products Containing or Produced With These Chemicals; The General Public		Tiering

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EPA-OPTS	77867 Premanufacture Notification Requirements and Review Procedures					Chemicals	Importing of Chemical Products					Workers in the Chemical Industry; the General Public				
EPA-OPTS	77868 Rules Restricting the Commercial and Industrial Use of Asbestos Fibers		Asbestos	Construction	Asbestos Products; and Asbestos Substitutes		Importing of Asbestos and Asbestos Products			Other Commercial Users of Asbestos Products		Workers in Asbestos Mining and Manufacturing; Consumers of Asbestos Products; the General Public			Information Disclosure; Marketable Permits	
EPA-OWWM	77870 Control of Organic Chemicals in Drinking Water				Water Supply Equipment	Public Water Supply Systems	Wholesale of Water Supply Equipment		Sanitary Engineers	Commercial Users of Water	State and Local Water Treatment Programs	Water Consumers; the General Public				

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EPA-OWWM	77776 Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Iron and Steel Manufacturing Plants to Navigable Waterways and the Pretreatment of Wastewaters Introduced into Publicly Owned Treatment Works		Construction		Iron and Steel Manufacturing Industries Using Iron and Steel Products						Other Commercial Users of Iron and Steel Products	State and Local Water Pollution Control	Consumers of Iron and Steel Products; the General Public			
EPA-OWWM	77778 Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Steam Electric Power Plants				Antipollution Equipment Manufacturing Industries Using Electricity	Electric Services					Other Commercial Users of Electricity	State and Local Water Pollution Control	Consumers of Electricity; the General Public; the Aquatic Environment			

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EPA-OWWM	77872 Hazardous Waste Regulations: Phase I and II Regulations to Control Hazardous Solid Waste from Generation to Final Disposal					Manufacturing Industries Generating Hazardous Waste	Hazardous Waste Management Systems		Banking and Savings and Loan Industries	Other Industries Generating Hazardous Wastes: Commercial Users of Goods Produced by Industries Generating Hazardous Waste	State and Local Waste Management Programs, Particularly in TX, OH, PA, LS, MI, IN, IL, TN, WV, and CA	Consumers of Goods Produced by Industries Generating Hazardous Waste, the General Public			Tiering	
EPA-OWWM	77876 Sewage Sludge Disposal Regulations					Fertilizer and Soil Conditioners Derived From Sludge	Sewerage Systems	Wholesale and Retail of Fertilizer and Soil Conditioner Derived From Sludge		Industries Discharging into Water Treatment Facilities	State and Local Waste Management Programs	The General Public				
EPA-OWWM	77780 Water Quality Standards Regulations					Manufacturing Industries Discharging into Surface Water	Water Treatment Works			Other Industries Discharging into Surface Waters	State Water Pollution Programs	The General Public				
EEOC-OGC	77915 Employee Benefit Plans; Proposed Guidelines on the Application of the Age Discrimination in Employment Act of 1967 to Retirement and Pension Plans									Establishments Subject to ADEA Maintaining Employee Benefit Plans	State and Local Government Employee Benefit Plans	Elderly Participants in Employee Benefit Plans				

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EEOC-OPI	77917 Interpretive Guidelines on Employment Discrimination and Reproductive Hazards				Manufacturing					Other Industries Exposing Workers to Reproductive Hazards		Workers Exposed to Reproductive Hazards	Small Business	
EEOC-OPI	77918 Proposed Revision of the Guidelines on Discrimination Because of National Origin								Labor Organizations Subject to Title VII of the Civil Rights Act of 1964	Companies Subject to Title VII of the Civil Rights Act of 1964	State and Local	Workers with Non-English Language Backgrounds		
FEMA	77878 Review and Approval of State and Local Radiological Emergency Plans and Preparedness				Manufacturing	Nuclear Power Plants				Other Commercial Users of Electricity Produced by Nuclear Power	State and Local Radiological Emergency Programs	Consumers of Electricity Produced by Nuclear Power, the General Public		
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GSA-FPRS	77948 National Defense Stockpile Disposal Regulations					Mining	Manufacturing						Other Industries Supplying, Trading and Using Basic Industrial Raw Materials	State and Local GSA-Funded Programs and Activities				Tiering
GSA-HRO	77919 Nondiscrimination Against Handicapped Persons in Programs and Activities Receiving Federal Assistance												GSA-Funded Programs and Activities					
GSA-NARS	77920 Freedom of Information Act Requests for National Security Classified Information in the National Archives											Organizations Requesting Classified Information	Other Establishments Requesting Classified Information		People Requesting Classified Information		Members of Federal Credit Unions	
NCUA	77788 Group Purchasing Activities of Federal Credit Unions									Wholesale and Retail of Consumer Products	Federal Credit Unions; Insurance Industry							Compliance Reform
SBA	77966 Revision of Business Loan Policy; Business Loans and Guarantees									Small Communications Businesses						Small Business		Deregulation
SBA	77920 Revision to Method of Establishing Size Standards and Definitions of Small Business															Small Business		Tiering

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			AGRICULTURE, FORESTRY, FISHING	MINING	CONSTRUCTION	MANUFACTURING	TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS AND SANITARY SERVICES	WHOLESALE AND RETAIL TRADE	FINANCE	INSURANCE	REAL ESTATE	OTHER SERVICES	ALL-OR MULTI-INDUSTRY	STATE LOCAL GOVERNMENT	POPULATION GROUPS: GEOGRAPHIC AREAS	SMALL BUSINESS	INNOVATIVE REGULATORY TECHNIQUES CONSIDERED																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																					
VA-DMA	State Cemetery Grants	77922			Cemetery Construction										Cemetery Construction Programs of States, Territories and Possessions	Veterans and Their Families																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																						

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CFTC	77791 Large Trader Reporting to Exchanges and Reporting Open Positions									Commodity Exchanges; Futures Commission Merchants; Foreign Brokers		Commercial Users of and Speculators in Commodities	Consumers of and Speculators in Commodities			
CFTC	77792 Proposed Rules Concerning Foreign Brokers and Traders									Commodity Exchanges; Domestic Futures Commission Merchants; Foreign Brokers and Traders		Commercial Users of and Speculators in Commodities	Consumers of and Speculators in Commodities			
CFTC	77793 Review of Guideline No. 1 - Criteria for Determining Whether a Board of Trade Meets the Economic Purpose and Public Interest Tests for Contract Market Designation									Commodity Exchanges; Futures Commission Merchants		Commercial Users of and Speculators in Commodities	Consumers of and Speculators in Commodities			
CPSC	77879 Chronic Hazards Associated with Benzidine Congener Dyes in Consumer Dye Products				Dye											Consumers of Home Dyes; Craftspeople; Hobbyists

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CPSC	Consumer Products Containing Asbestos	77883		Asbestos	Construction	Asbestos Products		Wholesale and Retail of Asbestos Products			Other Commercial Users of Asbestos Products		Consumers of Asbestos Products; the General Public		
CPSC	Omnidirectional Citizens Band Base Station Antenna Standard	77885			Installation of CB Base Station Omnidirectional Antennas	CB Base Station Omnidirectional Antennas		Wholesale, Retail, and Importing of CB Base Station Omnidirectional Antennas			Commercial users of CB Base Station Omnidirectional Antennas		Consumers of CB Base Station Omnidirectional Antennas		Performance Standards; Voluntary Standards
CPSC	Safety Requirements for Chain Saws	77887	Forestry	Construction	Chain Saws And Components						Industries Using Chain Saws		Professional and Consumer Users of Chain Saws		Voluntary Standards; Performance Standards

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CPSC	77889 Upholstered Furniture Cigarette Flammability Standard					Upholstered Furniture; Textile Mill Products; Thermoplastic Fabrics		Wholesale and Retail of Upholstered Furniture and Textile Mill Products				California	Consumers of Upholstered Furniture	Small Business	Voluntary Standards	
CPSC	77891 Urea Formaldehyde Foam (UFF) Insulation				Installation of UFF Insulation	UFF Insulation		Wholesale and Retail of UFF Insulation			Commercial Users of UFF Insulation		Consumers of UFF Insulation, Particularly People Sensitized to Formaldehyde, and with Respiratory Illnesses and Allergies		Information Disclosure	
FCC	77972 Children's Television Programming and Advertising Practices						Television Broadcasting			Advertising Industry			Children		Deregulation; Enhanced Competition	
FCC	77973 Creation of "New" Personal Radio Service					Two-Way Radio Equipment	Radio Broadcasting	Wholesale and Retail of Two-Way Radio Equipment					Users of Two-Way Radios; Owners of Home Entertainment Equipment			
FCC	77974 Deregulation of Competitive Domestic Telecommunications Market						Telecommunications Industry				Commercial Telecommunications Users		Telecommunications Users	Small Business	Deregulation	

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FDIC	77794 Applications, Requests, Submittals, and Notices of Acquisition of Control and Disclosure of Information									Insured, State Non-member Banks				The General Public		
FDIC	77795 Securities of Insured State Nonmember Banks									Insured Non-member Banks				The Investing Public	Small Business	
FEC	77949 Nonpartisan Communications by Corporations or Labor Organizations										Membership Organizations including Trade Associations and Labor Organizations	Corporations in All Industries				
FERC	77739 High-Cost Natural Gas Produced from Wells Drilled in Deep Waters		Natural Gas Production			Manufacturing						Other Business Users of Natural Gas		Consumers of Natural Gas; the General Public		Economic Incentives; Tiering
FERC	77740 High-Cost Natural Gas: Production Enhancement Procedures		Natural Gas Production			Manufacturing						Other Business Users of Natural Gas	State Energy Agencies	Consumers of Natural Gas; the General Public		
FERC	77741 Procedures Governing Applications for Special Relief Under Sections 104, 106, and 109 of the Natural Gas Policy Act of 1978		Natural Gas Production			Manufacturing		Natural Gas Transmission and Distribution				Other Business Users of Natural Gas		Consumers of Natural Gas		Tiering; Performance Standards

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FERC	Rate of Return: Electric	77743				Manufacturing	Electric Services					Other Business Users of Electricity; Business Investors in Electric Services		Private Investors in Electric Services; Consumers of Electricity		Performance Standards
FERC	Regulations Governing Applications for Major Unconstructed Projects	77744				Manufacturing	Hydroelectric Power	Hydroelectric Power				Other Commercial Users of Hydroelectric Power	State and Local Hydroelectric Projects	Consumers of Hydroelectric Power; The General Public		
FERC	Regulations Governing the Safety of All Water Power Projects and Project Works Licensed Under Part I of the Federal Power Act	77893					Hydroelectric Power	Hydroelectric Power			Engineering Services		State and Local Hydroelectric Projects	Workers at Hydroelectric Power Projects; People Living Near Projects; the General Public		Tiering
FERC	Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act	77745				Manufacturing	Natural Gas Production	Natural Gas Transmission and Distribution				Other Business Users of Natural Gas		Consumers of Natural Gas		
FHLBB	Regulations to Implement the Depository Institutions Deregulation and Monetary Control Act of 1980	77797								Savings and Loan Industry		Customers and Competitors of Savings And Loans		Customers and Competitors of Savings and Loans		Enhanced Competition
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FMC	Revision of Commission General Order 4, Licensing of Independent Ocean Freight Forwarders	77979					Deep Sea Foreign and Domestic Transportation; Independent Ocean Freight Forwarding											Small Business	Tiering
FRS	Truth in Lending	77798						Retail Establishments Granting Consumer Credit		Banking Industry; Credit Agencies Other Establishments Granting Consumer Credit							Consumers of Credit		Tiering
FTC	Amendment to Eyeglasses Rule and Eyeglasses II	77951						Retail Optical Industry						Ophthalmologists; Optometrists		State Regulation of the Optical Industry	Consumers of Eyeglasses and Contact Lenses		Enhanced Competition
FTC	Medical Participation in Control of Certain Open-Panel Medical Prepayment Plans	77953								Hospital and Medical Service Plans			Physicians; Nonphysician Health Care; Physician Organizations; Medical Groups			Subscribers to Hospital and Medical Service Plans; The General Public			Enhanced Competition

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FTC	77956	Proposed Trade Regulation Rule on Mobile Home Sales and Service				Mobile Homes		Retail of Mobile Homes		Real Estate Brokers and Agents; Related Services, Such as MLS	Brokerage Trade Associations; Related Services	Commercial Users of Brokerage Services	State Regulation of Real Estate Practices	Purchasers of Mobile Homes	Performance Standards; Compliance Reform
FTC	77959	Residential Real Estate Brokerage Industry Practices											State Regulation of Real Estate Practices	Consumers of Brokerage Services	Information Disclosure
FTC	77960	Trade Regulation Rule Concerning Credit Practices						Retail of Consumer Products		Credit Agencies; other Establishments Providing Consumer Credit	Adjustment and Collection Agencies		State Regulation of Credit Practices	Consumer Debtors	
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ICC	77982	Rules Governing Applications for Operating Authority; Acceptable Forms of Request for Operating Authority					Trucking; Water Transportation; Freight Forwarders; and Brokers							Consumers of Products Shipped by Truck and Water	Enhanced Competition

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INDEX I: SECTORS AFFECTED BY REGULATORY ACTION

AFFECTED INDUSTRIES			OTHER AFFECTED SECTORS												
			AGRICULTURE, FORESTRY, FISHING	MINING	CONSTRUCTION	MANUFACTURING	TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS AND SANITARY SERVICES	WHOLESALE AND RETAIL TRADE	FINANCE, INSURANCE, REAL ESTATE	OTHER SERVICES	ALL-OR MULT-INDUSTRY	STATE, LOCAL GOVERNMENT	POPULATION GROUPS: GEOGRAPHIC AREAS	SMALL BUSINESS	INNOVATIVE TECHNOLOGIES CONSIDERED
AGENCY	TITLE OF REGULATION	PAGE NO.				All Manufacturing; Nuclear Materials	Nuclear Power Plants				Other Industries Using Nuclear Materials; Other Business Users of Electricity Produced by Nuclear Power	State Control of Nuclear Materials and Facilities	Workers in Nuclear-Related Industries; Consumers of Electricity Produced by Nuclear Power; the General Public		Tiering
NRC-OSD	Decommissioning of Nuclear Facilities Regulation	77894													
NRC-OSD	Disposal of High-Level Radioactive Waste in Geologic Repositories Regulation	77896				Nuclear Materials	Nuclear Power Plants				Business Users of Electricity Produced by Nuclear Power	State and Local	Consumers of Electricity Produced by Nuclear Power; the General Public		
PRC	Experimental Classification--Rulemaking Docket No. RM80-2	77983					US Postal Service						The Mailing Public		Disclosure
PRC	Postal Rate Commission Docket--E-COM Forms of Acceptance, 1980	77985					Telecommunications industry and the US Postal Service				Large Volume Mailers; and Business Users of These Mailers' Goods and Services		Recipients of Mail throughout the Nation		
PRC	Postal Rate Commission Docket R80-1--Postal Rate and Fee Changes, 1980	77987					US Postal Service				Business Users of the Mail		The Mailing Public; and Recipients of Mail	Small Business	

Please See Introduction to this Index for Explanation of Categories

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AFFECTED INDUSTRIES			OTHER AFFECTED SECTORS													
AGENCY	TITLE OF REGULATION	PAGE NO.	AGRICULTURE, FORESTRY, FISHING	MINING	CONSTRUCTION	MANUFACTURING	TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS AND SANITARY SERVICES	WHOLESALE AND RETAIL TRADE	FINANCE, INSURANCE, REAL ESTATE	OTHER SERVICES	ALL-OR MULT-INDUSTRY	STATE, LOCAL GOVERNMENT	POPULATION GROUPS: GEOGRAPHIC AREAS	SMALL BUSINESS	INNOVATIVE REGULATORY TECHNIQUES CONSIDERED	
SEC	Proposed Comprehensive Revision to System for Registration of Securities Offerings	77800							Security Brokers; Dealers; Exchanges; and Services		Publicly Traded Companies Required to Register with the SEC; Business Investors in These Companies	Investors in Publicly Traded Companies Required to Register with the SEC			Tiering	
SEC	Proposed Rules Exempting the Acquisition and Ownership of Interests in Power Generation and Transmission Companies and Exempting Certain Non-Utility Subsidiaries of Registered Holding Companies	77802			Manufacturing Industries	Electric and Gas Services; Rural Electric Cooperatives; Transportation Industries					Other Commercial Users of Electricity, Gas and Other Energy Sources; Registered Holding Companies and Their Subsidiaries	Consumers of Electricity, Gas and Other Energy Sources				

Please See Introduction to this Index for Explanation of Categories

INDEX II: DATE OF NEXT REGULATORY ACTION

This index provides you with a quick reference to the status of each of the proposed regulations the agencies describe in this edition of the **Calendar**. The index indicates the month(s) in which the agency plans to take the next scheduled regulatory action.

The index is organized alphabetically by agency, unit within the agency, and then by title of the regulation. We also provide the page number where you can find each entry in this edition of the **Calendar**, so you can check specific dates in the "Timetable" section of that entry.

The actions we note fall into four general categories: ANPRM (Advance Notice of Proposed Rulemaking), NPRM (Notice of Proposed Rulemaking), Final Rule and Other (any important next action which does not fall into the previous three categories). Independent agencies are most likely to have "Other" actions, such as Staff Recommendations or Commission Decisions.

Of the 182 entries described in this **Calendar**, 74, or about 41 percent, of the entries have "Final Rule" scheduled as the next regulatory action; NPRMs are scheduled as the next action for 65 (about 36 percent); and 9 (about 5 percent) list ANPRMs as the next action. Of the remaining entries, 17 list "Other" regulatory actions, 14 do not have next actions scheduled yet, and 3 involve multiple actions.

To review the overall schedule which the agency anticipates for each **Calendar** entry, the reader should turn to the specific entry and refer to the "Timetable" section.

Note.—In most cases, the agency can only estimate these dates. For current information on any action, please call the Agency Contact listed for the specific entry.

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USDA-AMS Amendments to Federal Seed Act Regulations 77924						← N →									
USDA-AMS Regulatory Treatment of Reconstituted Milk in All Federal Milk Marketing Orders 77926															
USDA-FSOS Proposed Net Weight Regulations 77928															
USDA-FSOS Proposed Polychlorinated Biphenyls (PCBs) Regulation - Existing Equipment 77806								← F →							
USDA-SCS Watershed Protection and Flood Prevention Program 77747								← F →							
DOCMARAD Construction-Differential Subsidy Repayment; Total Repayment Policy 77931			← F →			← N →									

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DOC-NOAA 77748 Regulations Implementing a Fishery Management Plan for the Groundfish Fishery for the Bering Sea/Aleutian Island Area		← F →													
DOC-NOAA 77751 Regulations Implementing a Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, United States Waters		← N →													
DOC-NOAA 77753 Regulations on the Mining of Deep Seabed Hard Mineral Resources					← N →										
DOC-NOAA 77710 Regulations on the Construction, Location, Ownership, and Operation of Ocean Thermal Energy Conversion (OTEC) Facilities and Plantships	← A →														
ED-OCR 77898 Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Education, Effectuation of Title VI of the Civil Rights Act of 1964															
ED-OESE 77901 Financial Assistance to Local and State Agencies to Meet Special Educational Needs; and Financial Assistance to Local Educational Agencies for Children with Special Educational Needs		← F →													
DOE-CS 77712 Commercial and Apartment Conservation Service Program	← N →														

FINAL RULE-DATE TO BE DETERMINED

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DOE-CS Emergency Building Temperature Restrictions 77714	← F →														
DOE-CS Energy Conservation Program for Consumer Products Other Than Automobiles 77715			← F →		← N →										
DOE-CS Energy Performance Standards for New Buildings 77717										← N →					
DOE-CS Federal Price Support Loan Program for Energy from Municipal Waste Resource Recovery Facilities 77718	← N →														
DOE-CS Standby Federal Emergency Conservation Plan 77719		← F →													
DOE-ERA Amendments to Puerto Rican Naphtha Entitlements Regulations 77721	← F →														
DOE-ERA Crude Oil Resales Pricing Revisions 77722	← F →														
DOE-ERA Domestic Crude Oil Entitlements 77723			← F →												
DOE-ERA Gasohol Marketing Regulations 77724	← F →														
DOE-ERA Maximum Lawful Price for Unleaded Gasoline 77726	← F →														
DOE-ERA Motor Gasoline Allocation Regulations Revisions 77727	← F →														

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DOE-ERA Motor Gasoline - Downward Certification 77729															
DOE-ERA Natural Gas Curtailment Priorities for Interstate Pipelines 77730		← F →													
DOE-ERA Powerplant and Industrial Fuel Use Act of 1978; Cogeneration Exemption 77733		← F →													
DOE-ERA Outer Continental Shelf (OCS) Sequential Bidding Regulations 77734			← F →												
DOE-ERA Proposed Regulations Establishing Alternative Bidding Systems for Coal Lease Sales 77736		← F →													
HHS-FDA Abbreviated New Drug Applications for New Drugs Approved After October 10, 1962, for Human Use 77807			← N →												
HHS-FDA Chemical Compounds Used in Food-Producing Animals; Criteria and Procedures for Evaluating Assays for Carcinogenic Residues 77808							← F →								
HHS-FDA Current Good Manufacturing Practice Relating to Poisonous and Deleterious Substances in Food, Feed, and Food-Packaging Materials; Polychlorinated Biphenyls (PCBs) 77810															FINAL RULE TO BE COORDINATED WITH EPA AND USDA, 1982.

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HHS-FDA Food Labeling Initiatives 77813			←		← F →										
HHS-HCFA Conditions of Participation for Skilled Nursing Facilities and Intermediate Care Facilities 77814		← F →													
HHS-HCFA Consolidation of Survey and Certification Requirements for Medicare and Medicaid 77816				← N →											
HHS-HCFA Life Safety Code in Hospitals, Nursing Facilities, and Intermediate Care Facilities 77818		← F →													
HHS-HCFA Uniform Reporting Systems for Health Services Facilities and Organizations 77819															
HUD-FHA Coinurance for Private Mortgage Lenders (New Construction) 77902	← N →														
HUD-HOUS Minimum Property Standards for One- and Two-Family Dwellings 77903									← F →						
HUD-NVACP Lead-Based Paint - Chewable Surfaces 77821		← A →	← →												
HUD-OS Solar Energy and Energy Conservation Bank 77737		← O →													
DOI-HCRS Uniform Rules and Regulations for the Protection and Conservation of Archaeological Resources Located on Public and Indian Lands 77755	← N →														

MULTIPLE ACTIONS -- SEE ENTRY FOR DETAILS

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DOL-ESA Sex Discrimination Guidelines-- Employee Benefits 77910															
DOL-LMSA-PWBP Definition of Plan Assets and Establishment of Trust 77911															
DOL-LMSA-PWBP Individual Benefit Reporting and Recordkeeping for Multiple Employer Plans 77912															
DOL-LMSA-PWBP Individual Benefit Reporting and Recordkeeping for Single Employer Plans 77913															
DOL-MSHA Mandatory Safety Standards for Surface Coal Mines and Surface Areas of Underground Coal Mines 77822		← N →													
DOL-MSHA Regulations Setting Forth Requirements for Safety and Health Training for Mine Construction Workers 77823			← A →												
DOL-MSHA Requirements for Construction and Maintenance of Impounding Structures and Tailings Piles at Metal and Nonmetal Mines 77824												← A →			
DOL-MSHA Review of Safety and Health Standards Applicable to Metal and Nonmetal Mining and Milling Operations 77825								← O →							

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DOL-MSHA Safety and Health Standards for Construction Work at All Surface Mines and Surface Areas of Underground Mines 77826			↔ N ↔												
DOL-OSHA Generic Standard for Occupational Exposure to Pesticides During Manufacture and Formulation 77827								↔ N ↔							
DOL-OSHA Identification and Labeling of Hazardous Materials in the Workplace 77829		↔ N ↔													
DOL-OSHA Occupational Noise Exposure Hearing-Conservation Amendment 77831		↔ F ↔													
DOL-OSHA OSHA General Industry Standard for Walking and Working Surfaces, and Construction Safety Standards for Ladders and Scaffolding, Floor and Wall Openings, and Stairways 77833								↔ N ↔							
DOL-OSHA Regulations for Reducing Safety and Health Hazards in Abrasive Blasting Operations 77835		↔ N ↔													
DOL-OSHA Safety and Health Regulations for Locking Out and Tagging Energy Sources in General Industry and in Construction 77837								↔ N ↔							
DOL-OSHA Safety and Health Standard for Conveyors 77838			↔ O ↔												↔ F ↔
DOL-OSHA Standard for Occupational Exposure to Asbestos 77840		↔ N ↔													

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[illegible]

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DOT-OST Special Air Traffic Rules and Airport Traffic Patterns 77965							← F →								
DOT-USCG Construction and Equipment for Existing Self-Propelled Vessels Carrying Bulk Liquefied Gases 77953						← N →									
DOT-USCG Construction Standards for the Prevention of Pollution from New Tank Barges Due to Accidental Hull Damage; and Regulatory Action to Reduce Pollution from Existing Tank Barges Due to Accidental Hull Damage 77763															
TREAS-ATF Accelerated Payment of Certain Tobacco Products Excise Taxes 77934															
TREAS-ATF Delivery of Certain Alcohol and Tobacco Products Excise Tax Payments via Electronic Fund Transfer 77935		← F →													
TREAS-ATF Implementation of the Distilled Spirits Tax Revision Act of 1979 77937					← F →										
TREAS-ATF Labeling and Advertising Regulations Under the Federal Alcohol Administration Act 77938															
TREAS-CUSTOMS Accelerated Duty Payment 77940		← N →													
TREAS-CUSTOMS Administrative Rulings 77942		← F →													

DATES TO BE DETERMINED

DATE TO BE DETERMINED

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TREAS-CUSTOMS Civil Aircraft Regulations 77943		← F →													
TREAS-CUSTOMS Importation of Motor Vehicles and Motor Vehicle Engines Under the Clean Air Act 77944				← F →											
TREAS-CUSTOMS Interest Charges on Delinquent Accounts 77945		← N →													
TREAS-CUSTOMS Valuation of Imported Merchandise for Customs Purposes 77946		← F →													
TREAS-OCC Adjustable-Rate Mortgages 77782			← F →												
TREAS-OCC Description of Office, Procedures, Public Information; Supplemental Application Procedures; Assessment of Fees; National Banks; District of Columbia Banks; Employee Stock Option and Stock Purchase Plans; Changes in Bank Structure; Change in Bank Control; Federal Branches and Agencies of Foreign Banks; Policy Statements 77783		← N →													
TREAS-OCC Lending Limits; Unimpaired Surplus Fund 77785		← F →													
TREAS-OCC Use of Data Processing Equipment and Furnishing of Data Processing Services 77787		← N →													

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EPA-OANR 77854 Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes		← N →													
EPA-OANR 77855 Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer						← F →									
EPA-OANR 77765 Regulations for the Prevention of Significant Deterioration (PSD) from Set II Pollutants (Hydrocarbons, Carbon Monoxide, Nitrogen Oxide, Ozone, and Lead)										← N →					
EPA-OANR 77857 Remedial Action Standards for Inactive Uranium Processing Sites	← N →														
EPA-OANR 77766 Review, and Possible Revision, of the National Ambient Air Quality Standard for Carbon Monoxide					← F →										
EPA-OANR 77768 Review, and Possible Revision, of the National Ambient Air Quality Standard for Nitrogen Dioxide					← N →										
EPA-OANR 77769 Review, and Possible Revision, of the National Ambient Air Quality Standards for Particulate Matter													← N →		
EPA-OANR 77770 Review, and Possible Revision, of the National Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide)													← N →		

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EPA-OAHR Standards of Performance to Control Atmospheric Emissions from Industrial Boilers 77771									↔ N ↔						
EPA-OAHR-OMSAPC Fuels and Fuel Additives 77860				↔ A ↔											
EPA-OAHR-OMSAPC Gaseous Emission Regulations for 1985 and Later Model Year Light-Duty Trucks and Heavy-Duty Engines 77772		↔ N ↔													
EPA-OAHR-OMSAPC Heavy-Duty Diesel Particulate Regulations 77773		↔ N ↔													
EPA-OPTS Chemical Hazard Warning Labels 77861		↔ N ↔													
EPA-OPTS Chloromethane and Chlorinated Benzene Proposed Test Rule; Amendment to Proposed Health Effects Standards 77863												↔ F ↔			
EPA-OPTS Pesticide Registration Guidelines 77865															
EPA-OPTS Pesticide Registration Guidelines 77867						↔ F ↔									
EPA-OPTS Rules Restricting the Commercial and Industrial Use of Asbestos Fibers 77868										↔ N ↔					
EPA-OWWM Control of Organic Chemicals in Drinking Water 77870		↔ A ↔													

MULTIPLE ACTIONS -- CALL OR WRITE AGENCY CONTACT (SEE ENTRY.)

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EPA-OWWM 77775 Effluent Limitations Guide- lines and Pretreatment Stan- dards, and New Source Standards Controlling the Discharge of Pollutants from Pulp, Paper, and Paperboard Mills into Navigable Waterways	←N→														
EPA-OWWM 77776 Effluent Limitations Guide- lines and Standards Control- ling the Discharge of Pollu- tants from Iron and Steel Manufacturing Plants to Navi- gable Waterways and the Pre- treatment of Wastewaters Introduced into Publicly Owned Treatment Works	←N→														
EPA-OWWM 77778 Effluent Limitations Guide- lines and Standards Control- ling the Discharge of Pollu- tants from Steam Electric Power Plants						←F→									
EPA-OWWM 77872 Hazardous Waste Regulations: Phase I and II Regulations to Control Hazardous Solid Waste from Generation to Final Disposal			←O→			(FINAL RULES EFFECTIVE JAN. 16, 1981.)									
EPA-OWWM 77876 Sewage Sludge Disposal Regulations			←N→												
EPA-OWWM 77780 Water Quality Standards Regulations		←N→													
EEOC-OGC 77915 Employee Benefit Plans; Pro- posed Guidelines on the Application of the Age Dis- crimination in Employment Act of 1967 to Retirement and Pension Plans	←N→														

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EEOC-OGC 77916 Proposed Rule on the Application of the Age Discrimination in Employment Act of 1967 to Apprenticeship Programs	← F →														
EEOC-OPI 77917 Interpretive Guidelines on Employment Discrimination and Reproductive Hazards															
EEOC-OPI 77918 Proposed Revision of the Guidelines on Discrimination Because of National Origin	← F →														
FEMA 77878 Review and Approval of State and Local Radiological Emergency Plans and Preparedness															
GSA-FPRS 77948 National Defense Stockpile Acquisition Regulations	← F →														
GSA-FPRS 77948 National Defense Stockpile Disposal Regulations	← F →														
GSA-HRO 77919 Nondiscrimination Against Handicapped Persons in Programs and Activities Receiving Federal Assistance	← F →														
GSA-NARS 77920 Freedom of Information Act Requests for National Security Classified Information in the National Archives			← N →												
NCUA 77788 Group Purchasing Activities of Federal Credit Unions	← O →														
SBA 77966 Revision of Business Loan Policy; Business Loans and Guarantees	← N →														

DATE FOR FINAL GUIDELINES TO BE DETERMINED

FINAL RULE--DATE TO BE DETERMINED

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SBA Revision to Method of Establishing Size Standards, and Definitions of Small Business		←N→													
VA-DMA State Cemetery Grants		←F→													
VA-OHG Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Veterans Administration		←N→													
CAB Air Carrier Insurance and Liability		←F→													
CAB Essential Air Service Subsidy Guidelines		←N→													
CAB Notice to Passengers of Conditions of Carriage		←F→													
CFTC Large Trader Reporting to Exchanges and Reporting Open Positions		←O→													
CFTC Proposed Rules Concerning Foreign Brokers and Traders	←F→														
CFTC Review of Guideline No. 1 - Criteria for Determining Whether a Board of Trade Meets the Economic Purpose and Public Interest Tests for Contract Market Designation								←F→							
CPSC Chronic Hazards Associated with Benzidine Congener Dyes in Consumer Dye Products															

FURTHER ACTION TO BE DETERMINED

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CPSC 77881 Chronic Hazards Associated with Formaldehyde	← A →														
CPSC 77883 Consumer Products Containing Asbestos		← O →													
CPSC 77885 Omnidirectional Citizens Band Base Station Antenna Standard						← N →									
CPSC 77887 Safety Requirements for Chain Saws								FURTHER ACTION TO BE DETERMINED							
CPSC 77889 Upholstered Furniture Cigarette Flammability Standard								FURTHER ACTION TO BE DETERMINED							
CPSC 77891 Urea Formaldehyde Foam (UFF) Insulation	← O →														
FCC 77972 Children's Television Programming and Advertising Practices		← O →													
FCC 77973 Creation of "New" Personal Radio Service			← O →												
FCC 77974 Deregulation of Competitive Domestic Telecommunications Market	← O →														
FCC 77975 Notice of Inquiry/Notice of Proposed Rulemaking in the Matter of Radio Deregulation		← O →													
FDIC 77794 Applications, Requests, Submittals, and Notices of Acquisition of Control and Disclosure of Information		← F →													

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FDIC 77795 Securities of Insured State Nonmember Banks							← F →								
FEC 77949 Nonpartisan Communications by Corporations or Labor Organizations		← N →													
FERC 77739 High-Cost Natural Gas Produced from Wells Drilled in Deep Waters		← F →													
FERC 77740 High-Cost Natural Gas: Production Enhancement Procedures															
FERC 77741 Procedures Governing Applications for Special Relief Under Sections 104, 106, and 109 of the Natural Gas Policy Act of 1978		← F →													
FERC 77743 Rate of Return: Electric															
FERC 77744 Regulations Governing Applications for Major Unconstructed projects	← N →														
FERC 77893 Regulations Governing the Safety of All Water Power Projects and Project Works Licensed Under Part I of the Federal Power Act		← F →													
FERC 77745 Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act			← F →												

REHEARING DECISION TO BE DETERMINED

DATES TO BE DETERMINED

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FHLBB 77797 Regulations to Implement the Depository Institutions Deregulation and Monetary Control Act of 1980	← F → (MULTIPLE ACTIONS)														
FMC 77977 Amendments to Tariff Filing Requirements for Controlled Carriers	← F →														
FMC 77978 Filing of Currency Adjustment Factors	← F →														
FMC 77979 Revision of Commission General Order 4, Licensing of Independent Ocean Freight Forwarders	← F →														
FRS 77798 Truth in Lending	← N →														
FTC 77951 Amendment to Eyeglasses Rule and Eyeglasses II	← O →														
FTC 77953 Medical Participation in Control of Certain Open-Panel Medical Prepayment Plans	← O →														
FTC 77956 Proposed Trade Regulation Rule on Mobile Home Sales and Service	← O →														
FTC 77959 Residential Real Estate Brokerage Industry Practices	← O →														
ICC 77960 Trade Regulation Rule Concerning Credit Practices	← O →														

A = ANPRM N = NPRM F = FINAL RULE O = OTHER

INDEX II: DATE OF NEXT REGULATORY ACTION

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ICC Elimination of Gateway Restrictions and Circuitous Route Limitations; Removal of Restrictions from Authorities of Motor Carriers of Property		← F →													
ICC Rules Governing Applications for Operating Authority; Acceptable Forms of Request for Operating Authority		← F →													
NRC-OSD Decommissioning of Nuclear Facilities Regulation											← N →				
NRC-OSD Disposal of High-Level Radioactive Waste in Geologic Repositories Regulation															
PRC Experimental Classification--Rulemaking Docket No. RM80-2															
PRC Postal Rate Commission Docket--E-COM Forms of Acceptance, 1980															
PRC Postal Rate Commission Docket R80-1--Postal Rate and Fee Changes, 1980		← O →													
SEC Proposed Comprehensive Revision to System for Registration of Securities Offerings															
SEC Proposed Rules Exempting the Acquisition and Ownership of Interests in Power Generation and Transmission Companies and Exempting Certain Non-Utility Subsidiaries of Registered Holding Companies	← F →														

A = ANPRM N = NPRM F = FINAL-RULE O = OTHER

INDEX III: DATES FOR PUBLIC PARTICIPATION OPPORTUNITIES

This index provides the basic timetable information needed by readers who are interested in participating in the development of regulations. The index is organized alphabetically by agency, by unit within the agency, and then by the title of the regulation.

This index graphically displays the dates of public comment periods, meetings, and hearings on proposed regulations which agencies describe in this edition of the Calendar. Where possible, we indicate the opening and closing dates of the comment periods, the dates and locations of public hearings and meetings, and the next regulatory action for the entry. The index also indicates whether the agencies provide funding or technical assistance for each regulation.

Not all regulations described in the Calendar are included here; only those with present or future opportunities for public participation. Those which are not listed usually had public comment periods, meetings, or hearings that have passed.

For more information about participation opportunities, the reader should consult Appendix I: Public Participation in the Federal Regulatory Process. For further information on each regulation, the reader should refer to the text of the entry in the appropriate chapter of the Calendar.

AGENCY / TITLE OF REGULATION	PAGE NO.	NOV. 80	DEC. 80	JAN. 81	FEB. 81	MAR. 81	APR. 81	MAY 81	JUN. 81	JUL. 81	AUG. 81	SEP. 81	OCT. 81	FUNDING, TECHNICAL ASSISTANCE AVAILABLE (YES/NO)	NEXT REGULATORY ACTION	COMMENTS
USDA-AMS Amendments to Federal Seed Act Regulations	77924	← H →	← H →	← C →										Funding-No Assistance-Yes	NPRM	Public hearings for NPRM on seed test rules and standards for certified seed in Denver, CO., and Washington, D.C., in December 1980. NPRM for other amendments in spring 1981, followed by public hearings and a public comment period of at least 60 days.
USDA-AMS Regulatory Treatment of Reconstituted Milk in All Federal Milk Marketing Orders	77926	← C →													To be Determined	Public comments requested on draft impact statement published in the Federal Register Nov. 17, 1980 (estimated). Comment period until January 2, 1981.
USDA-FSOS Proposed Net Weight Regulations	77928	← C →												Funding-No Assistance-Yes	Final	Public comment period extended to early January 1981.
USDA-FSOS Proposed Polychlorinated Biphenyls (PCBs) Regulation - Existing Equipment	77806	← C →												Funding-No Assistance-Yes	Final Rule	Public comment period on NPRM closes December 4, 1980.

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USDA-SCS 77747 Watershed Protection and Flood Prevention Program							↔	↔					Funding-No Assistance-Yes	NPRM	Public comment period 60 days following NPRM in April 1981.
DOC-NOAA 77753 Regulations on the Mining of Deep Seabed Hard Mineral Resources													Funding-Yes Assistance-No	NPRM	Public comment period 60 days following publication of NPRM, March 1981. Public hearing during comment period.
DOC-NOAA 77710 Regulations on the Construction, Location, Ownership, and Operation of Ocean Thermal Energy Conversion (OTEC) Facilities and Plantships													Funding-Yes Assistance-No	ANPRM	Public meetings on proposed rules and draft environmental impact statement before they are issued. At least one public hearing after NPRM is issued. March 1981. Public comment period 60 days following NPRM.
DOE-CS 77717 Energy Performance Standards for New Buildings													No	NPRM	Public comment period will follow NPRM published in August 1981.
DOE-CS 77718 Federal Price Support Loan Program for Energy from Municipal Waste Resource Recovery Facilities	↔	↔											No	NPRM	Public comment period for Phase I, November/December 1980.
DOE-ERA 77723 Domestic Crude Oil Entitlements	↔	↔											No	Final Rule	Public comment period 60 days following NPRM, October 1980.
HHS-HCFA 77816 Consolidation of Survey and Certification Requirements for Medicare and Medicaid							↔	↔					No	NPRM	Public comment period 60 days following publication of NPRM, March 31, 1981.
HUD-FHA 77902 Coinsurance for Private Mortgage Lenders (New Construction)	↔	↔	↔										No	NPRM	Public comment period 60 days following NPRM, November 1980.

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INDEX III: DATES FOR PUBLIC PARTICIPATION OPPORTUNITIES

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HUD-NVACP 77821 Lead-Based Paint - Chewable Surfaces			↔ C ↔	↔ C ↔									No	ANPRM	Public comment period 60 days following ANPRM, December 1980.
HUD-OS 77737 Solar Energy and Energy Conservation Bank			↔ C ↔	↔ C ↔									No	Interim Rule	Public comment period 60 days following Interim Rule, December 1980.
DOI-HCRS 77755 Uniform Rules and Regulations for the Protection and Conservation of Archaeological Resources Located on Public and Indian Lands	↔ C ↔ ↔ H ↔	↔ C ↔ ↔ H ↔											Funding-No Assistance-Yes	NPRM	Public comment period ends approximately December 19, 1980. Public hearings November 8 to December 13, 1980, at Albuquerque, NM; Anchorage, AK; San Francisco, CA; Denver, CO; Chicago, IL; Atlanta, GA.
DOI-NPS 77757 Right-of-Way Regulations	↔ C ↔	↔ C ↔											No	NPRM	Public comment period 90 days following NPRM, published December 1, 1980.
DOI-OSM 77759 Definition: "Surface Coal Mining Operations" and "Coal-Processing Plant"								↔ H ↔	↔ H ↔				Yes	ANPRM	Public hearings scheduled for Washington, D.C.; Indianapolis, IN; and Denver, CO, from June 15 to August 15, 1981. Public comment period runs simultaneously.
DOI-OSM 77760 Discharge from Mine Areas: Revision of Standards for Effluent Limits and Sedimentation Ponds	↔ C ↔ ↔ H ↔	↔ C ↔ ↔ H ↔											Yes	Final Rule	Public comment period ends December 31, 1980. Public hearings held at Washington, D.C.; Knoxville, TN; Indianapolis, IN; Kansas City, KS; Denver, CO; and Seattle, WA, from November 20 to December 11, 1980.
DOI-WPRS 77762 Rules and Regulations for Acreage Limitation Under Federal Reclamation Law	↔ C ↔	↔ C ↔	↔ H ↔	↔ H ↔									No	Revised NPRM	Public hearings December 15, 1980, to March 16, 1981.
DOJ-CRD 77904 Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs													No	NPRM	Public comment period minimum of 90 days following publication of NPRM in Dec. 1980-Jan. 1981.

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DOJ-CRD 77905 Regulations Prohibiting Discrimination on the Basis of Sex in Education and Training Programs Receiving Federal Financial Assistance													No	NPRM	Public comment period 90 days following NPRM published in December 1980.
DOJ-INS 77907 Employment Authorization													No	Revised NPRM	Public comment period 90 days following NPRM published in November 1980.
DOL-MSHA 77822 Mandatory Safety Standards for Surface Coal Mines and Surface Areas of Underground Coal Mines													No	NPRM	Public comment period 60 days following NPRM, December 30, 1980. Public hearings also will be held; dates not yet finalized.
DOL-MSHA 77823 Regulations Setting Forth Requirements for Safety and Health Training for Mine Construction Workers													No	ANPRM	Public comment period 45 days following ANPRM, January 1981, and 60 days following NPRM (publication date unknown).
DOL-MSHA 77824 Requirements for Construction and Maintenance of Impounding Structures and Tailings Piles at Metal and Nonmetal Mines													No	ANPRM	Public comment period March 30 to May 30, 1982, following publication of NPRM, winter 1981.
DOL-MSHA 77825 Review of Safety and Health Standards Applicable to Metal and Nonmetal Mining and Milling Operations													No	Notice of MSHA Decision of Priorities	Public meetings June to October 1981. Public comment period 60 days following NPRM in January 1982. Public hearings, January 1982.
DOL-MSHA 77826 Safety and Health Standards for Construction Work at All Surface Mines and Surface Areas of Underground Mines													No	NPRM	Public comment period 60 days following NPRM, January 1981. Locations of public hearings, February to March 1981, to be announced.

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DOL-OSHA	77827 Generic Standard for Occupational Exposure to Pesticides During Manufacture and Formulation														No	NPRM	Public comment period 30-60 days following NPRM, summer 1981. Hearing will be held after comment period, if requested.
DOL-OSHA	77829 Identification and Labeling of Hazardous Materials in the Workplace														No	NPRM	Public comment period 60 days following NPRM, fall 1980.
DOL-OSHA	77833 OSHA General Industry Standard for Walking and Working Surfaces, and Construction Safety Standards for Ladders and Scaffolding, Floor and Wall Openings, and Stairways														No	NPRM	Public comment period 90 days following NPRM, summer 1981. Public hearings also will be held; dates and locations not yet scheduled.
DOL-OSHA	77835 Regulations for Reducing Safety and Health Hazards in Abrasive Blasting Operations														No	NPRM	Public comment period and public hearing following NPRM, fall 1980.
DOL-OSHA	77837 Safety and Health Regulations for Locking Out and Tagging Energy Sources in General Industry and in Construction		← M →												No	NPRM	Informal public meetings on both general industry and construction issues, fall 1980.
DOL-OSHA	77838 Safety and Health Standard for Conveyors														No	Notice to Reopen the Record	Public comment period 60 days following Notice to Reopen the Record, winter 1981.
DOL-OSHA	77840 Standard for Occupational Exposure to Asbestos														No	NPRM	Public comment period 30-60 days following NPRM, late winter 1980; public hearing also will follow NPRM.

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DOL-OSHA Standard for Occupational Exposure to Chromium 77842													No	ANPRM	Public comment period following NPRM, summer 1981; public hearing following comment period, if requested.
DOL-OSHA Standard for Occupational Exposure to Safety and Health Hazards in Grain Handling Facilities 77844													No	NPRM	NPRM tentatively planned for late summer 1981; public hearings in fall or winter 1981.
DOT-FAA Flammability Standards for Crewmember Uniforms 77846	— C —	↑											No	NPRM	Public comment period 90-120 days following NPRM, July 1981. Comment period ends December 16, 1980.
DOT-FHWA Design Standards for Highways - Geometric Design Standards for Resurfacing, Restoration, and Rehabilitation (RRR) of Streets and Highways Other Than Freeways 77964		↔	↔	↔									No	NPRM	Public comment period 90 days following NPRM, November 30, 1980; public meeting approximately 30 days following NPRM.
DOT-OST Special Air Traffic Rules and Airport Traffic Patterns 77965	↔	↔	↔	↔									No	Final Rule	Public comment period 90 days following publication of NPRM, October 27, 1980. Public hearing, December 1980.
TREAS-ATF Labeling and Advertising Regulations Under the Federal Alcohol Administration Act 77938		↔	↔	↔									No	NPRM	Public hearing(s) held if warranted.
TREAS- CUSTOMS Accelerated Duty Payment 77940													No	NPRM	Public comment period 60 days following NPRM, fall 1980.
TREAS- CUSTOMS Importation of Motor Vehicles and Motor Vehicle Engines Under the Clean Air Act 77944	— C —	↑											No	Final Rule	Public comment period ends December 3, 1980.

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TREAS. CUSTOMS Interest Charges on Delinquent Accounts 77945													No	NPRM	Public comment period 60 days following NPRM, fall 1980.
TREAS-OCC Adjustable-Rate Mortgages 77782	— C →												Funding-No Assistance-Yes	Final Rule	Public comment period ends November 28, 1980.
TREAS-OCC Description of Office, Procedures, Public Information; Supplemental Application Procedures; Assessment of Fees; National Banks; District of Columbia Banks; Employee Stock Option and Stock Purchase Plans; Changes in Capital Structure; Change in Bank Control; Federal Branches and Agencies of Foreign Banks; Policy Statements 77783						— C —						↑	Funding-No Assistance-Yes	NPRM	Public comment period from September 1980 to November 1981 includes several topical issues, each having its own comment period.
EPA-OANR Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes 77854													No	NPRM	Public comment period 180 days following publication of NPRM December 1980; several public hearings during comment period (times and places to be announced).
EPA-OANR Regulations for the Prevention of Significant Deterioration (PSD) from Set II Pollutants (Hydrocarbons, Carbon Monoxide, Nitrogen Oxide, Ozone, and Lead) 77765											↔ H ↔		No	NPRM	Public hearing September 1981. Public comment period ending October 1981 for NPRM published in August.
EPA-OANR Remedial Action Standards for Inactive Uranium Processing Sites 77857													No	NPRM	Public hearings on NPRM (to be published November 1980) to be announced; dates will be announced. Public comment period at least 60 days; dates not yet scheduled.

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EPA-OANR Review, and Possible Revision, of the National Ambient Air Quality Standard for Nitrogen Dioxide 77768													No	NPRM	Public comment period to be specified in NPRM, spring 1981. Public hearings 60 days after publication of NPRM.
EPA-OANR Review, and Possible Revision, of the National Ambient Air Quality Standards for Particulate Matter 77769													No	NPRM	Public comment period to be specified in NPRM, fall 1981. Public hearing 60 days after publication of NPRM.
EPA-OANR Review, and Possible Revision, of the National Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide) 77770													No	NPRM	Public comment period to be specified in NPRM, fall 1981. Public hearing 60 days after publication of NPRM.
EPA-OANR Standards of Performance to Control Atmospheric Emissions from Industrial Boilers 77771													No	NPRM	Public hearing, March 1981.
EPA-OANR -OMSAPC Fuels and Fuel Additives 77860													No	ANPRM	Public hearing 60 days after publication of NPRM, November 1981; public comment period, 90 days following NPRM.
EPA-OANR -OMSAPC Gaseous Emission Regulations for 1985 and Later Model Year Light-Duty Trucks and Heavy-Duty Engines 77772													No	NPRM	Public comment period 60 days following publication of NPRM, December 1980. Public hearing, February 1981.
EPA-OANR -OMSAPC Heavy-Duty Diesel Particulate Regulations 77773													No	NPRM	Public comment period 60 days following publication of NPRM, November 30, 1980. Public hearing, 30 days after NPRM, in Ann Arbor, MI.

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EPA-OPTS Chemical Hazard Warning Labels 77861													Yes	NPRM	Public comment period will follow NPRM (to be published December 1980); public hearings schedule not yet set.
EPA-OPTS Pesticide Registration Guidelines 77865													No		Multiple actions. Call or write Agency Contact (see entry).
EPA-OPTS Rules Restricting the Commercial and Industrial Use of Asbestos Fibers 77868										←	— C —		Yes	NPRM	Public comment period August to December 1981; public hearing December 1981 in Washington, D.C.
EPA-OWWM Control of Organic Chemicals in Drinking Water 77870		↔	↔ O ↔	↔				↔	↔ H ↔	↔			No	ANPRM	Public technical seminar, winter 1980-1981; public hearings, summer 1981. Details to be announced.
EPA-OWWM Effluent Limitations Guidelines and Pretreatment Standards, and New Source Standards Controlling the Discharge of Pollutants from Pulp, Paper, and Paperboard Mills into Navigable Waterways 77775													No	NPRM	Public comment period 60 days following publication of NPRM, November 1980.
EPA-OWWM Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Iron and Steel Manufacturing Plants to Navigable Waterways and the Pretreatment of Wastewaters Introduced into Publicly Owned Treatment Works 77776				↔ H ↔ ↔ C ↔									No	NPRM	Public comment period and hearing, February 1981.
EPA-OWWM Effluent Limitations Guidelines and Standards Controlling the Discharge of Pollutants from Steam Electric Power Plants 77778	↔ C ↔	↔											No	Final Rule	Public comment period from Oct. 14, 1980-Dec. 14, 1980.

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EPA-OWWM Sewage Sludge Disposal Regulations 77876													No	NPRM	Public comment period 60 days following publication of NPRM, December 1980; 3-5 public hearings in various cities shortly after NPRM.
EPA-OWWM Water Quality Standards Regulations 77780													No	NPRM	Public comment period 3-4 months following publication of NPRM, Dec. 1980. Public hearings as needed.
EEOC-OGC Employee Benefit Plans; Proposed Guidelines on the Application of the Age Discrimination in Employment Act of 1967 to Retirement and Pension Plans 77915													No	NPRM	Public comment period 90 days following publication of NPRM, fall 1980.
EEOC-OGC Proposed Rule on the Application of the Age Discrimination in Employment Act of 1967 to Apprenticeship Programs 77916	-C→												No	Final Rule	Public comment period ends November 28, 1980.
GSA-NARS Freedom of Information Act Requests for National Security Classified Information in the National Archives 77920													Funding-No Assistance-Yes	NPRM	Public comment period 60 days following NPRM, early 1981.
NCUA Group Purchasing Activities of Federal Credit Unions 77788													No	Preliminary Review by NCUA Staff	Pre-ANPRM: date of ANPRM to be determined. Public comment period 60 days following NPRM, also to be determined. Public hearing not anticipated.
SBA Revision of Business Loan Policy; Business Loans and Guarantees 77966		-C→											No	NPRM	Public comment period on ANPRM ends December 8, 1980. Comment period on NPRM, December 8, 1980, to February 8, 1981.
VA-OHG Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Veterans Administration 77922													Funding-No Assistance-Yes	NPRM	Public comment period 30 days following NPRM, December 1980.

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CAB 77969 Essential Air Service Subsidy Guidelines													No	NPRM	Public comment period to be announced in NPRM, winter 1980-1981.
CFTC 77791 Large Trader Reporting to Exchanges and Reporting Open Positions	—C—												No	Staff Recommendation	Public comment period closes November 25, 1980.
CFTC 77793 Review of Guideline No. 1 - Criteria for Determining Whether a Board of Trade Meets the Economic Purpose and Public Interest Tests for Contract Market Designation	↔	↔											No	Final Rule	Public comment period on NPRM closes February 1, 1981.
OPSC 77985 Omnidirectional Citizens Band Base Station Antenna Standard								↔					Yes	NPRM	Public comment period, May and June 1981, following NPRM, April 30, 1981.
FRS 77798 Truth in Lending													No	NPRM	Public comment period 30 days following publication of NPRM, December 1980.
FTC 77951 Amendment to Eyeglasses Rule and Eyeglasses II		—C—											No	Staff Review of Recommendations	Public comment period on ANPRM ends January 1981.
FTC 77960 Trade Regulation Rule Concerning Credit Practices	—C—												Funding-Yes Assistance-No	Commission Consideration	Post-record comment period ends December 22, 1980.
NRC-OSD 77896 Disposal of High-Level Radioactive Waste in Geologic Repositories Regulation													No	NPRM	Public comment period 60 days following publication of NPRM, December 1980.
PRC 77985 Postal Rate Commission Docket--E-COM Forms of Acceptance, 1980													Funding-No Assistance-Yes	NPRM	Timetable to be determined when Postal Service files its proposal; PRC will hold public hearings.
SEC 77800 Proposed Comprehensive Revision to System for Registration of Securities Offerings	—C—												No	Final Rule	Public comment period began September 2, 1980, and ends January 15, 1981.

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APPENDIX I—PUBLIC PARTICIPATION IN THE FEDERAL REGULATORY PROCESS

I. Introduction

This appendix provides "first step" guidance for effective participation in the Federal regulatory process. It discusses the major procedures at the Federal level that help to ensure that the public's interests are considered fairly in the final decisionmaking process. The appendix describes the general requirements for public participation in 38 agencies of the Federal Government. This section of the appendix briefly discusses procedures that establish the public's role in the Federal rulemaking process. Specific information on the participation procedures at each Regulatory Council agency follows, including:

- The name of each unit, if any, in the agency that issues regulations;
- A brief description of the functions of the agency;
- A summary of the agency's public participation activities;
- A description of any special funding or technical assistance available for public participation activities;
- A list of documents describing the public participation procedures in the agency; and
- The contact person(s) who can provide further information.

Basic Definitions

Below are some basic definitions that will be helpful for those unfamiliar with Federal regulatory proceedings:

"Agency" means an organization of the Federal Government, and includes executive departments and agencies, independent agencies, and their components. (It does not include Congress or the courts.)

"Executive agencies" are headed by persons chosen by the President and who serve at his pleasure, while "independent agencies" are headed by persons appointed by the President for a specific length of time to chair the agency's commission or board. (There are specific limitations on the power of the President to remove the heads of these agencies.)

We have explained in the text of this appendix other terms with which readers may not be familiar.

II. Public Participation Funding and Technical Assistance

Some agencies provide funding and/or technical assistance for members of the public to participate in specified agency activities. Congress first authorized such funding in 1975, when it passed the Magnuson-Moss Act that

paved the way for reimbursement of selected groups and individuals to participate in rulemaking proceedings at the Federal Trade Commission.

Although not all agencies offer public participation funding, in some cases because of statutory limitations, those that do offer such funding provide financial assistance to interest groups, individuals, and/or businesses, or to those trade associations that can add a unique perspective to the proceeding and/or would not be able to participate otherwise. These assistance grants generally cover only out-of-pocket expenses, such as travel, telephone, duplication services, some attorney's fees, etc.

Statutes like the Magnuson-Moss Act as well as court decisions on judicial review also influenced agencies to hold more public hearings during major rulemaking proceedings. During the 1970s a great number of social regulations were promulgated, heightening public interest in rulemaking proceedings and increasing the need and demand for public hearings. The Administration is supporting legislation that would authorize public participation funding across the Government.

III. Public Participation in Statutes and Executive Orders

Public participation contributes to the efficiency of Government by providing policymakers with a perspective on issues that enables them to make informed decisions. We describe below the history of the public participation provisions that have permitted public access to information on agency records and proceedings.

A. *Federal Register Act (1935)*. The first law providing for the prompt and uniform distribution of documents that result from rulemakings and other agency proceedings was the Federal Register Act of 1935. This Act requires agencies to file documents with the Office of the Federal Register, which prints the *Federal Register*, a daily government publication that announces the official actions of Federal agencies. The Act also allows for public inspection of documents the day before their publication in the *Federal Register*.

The *Federal Register* is available at Federal depository libraries, where most Government publications are maintained for public use. Designated regional Federal depository libraries will have at least one copy of all Federal publications in printed or film form. There are more than 1,500 Federal depository libraries in the United States and its territories. Also, many university libraries have been designated as

Federal depositories. To find the one nearest you, contact a public library, university library or your U.S. Congressional representative.

B. *Administrative Procedure Act (1946)*. The first major provision for public participation in Federal regulatory proceedings was implemented in 1946 through the Administrative Procedure Act (5 U.S.C. §§ 551-559, 701-706). This Act obligates agencies to follow specific procedures in rulemaking, adjudication, and related matters where public input is most valuable.

This Act gives the public the right to participate in most rulemakings as follows:

1. *NPRM*—The agency must publish a Notice of Proposed Rulemaking (NPRM) in the *Federal Register* to let the public know of proposed rules the agency is considering. The NPRM must include the time, place, and nature of the proceeding; the legal authority under which the agency is proposing the rule; and a description of the proposed rule's substance or a description of the subject and issue(s) involved.

The Act also allows for members of the public to initiate a rulemaking proceeding by petitioning the agency to amend, modify, or repeal an existing rule. Not all agencies have specific procedures explaining how to submit a petition for rulemaking, as the Act does not require them. Individual and/or groups interested in developing a petition for rulemaking should examine the statutory basis for such a rule and the agency's mandate and related activities, or consult an attorney. The format for such a petition can duplicate that for submitting public comments.

2. *Making Public Comments*—The agency must allow interested persons and groups the opportunity to participate in rulemaking through written comments to the agency that support, oppose, or suggest modifications in proposed or existing rules—with or without the opportunity for an oral presentation. Anyone can take advantage of this opportunity during the public comment period.

Each agency may have its own specific requirements for how it will accept public comments. Generally, agencies prefer that you:

- Type your comments neatly;
- Indicate the rulemaking proceeding that the comments address;
- Include the writer's name, full address, and title and/or affiliation; and
- Clearly state your arguments favoring or opposing the rule, e.g., you could include information about how the agency's proposal could affect the socioeconomic growth and quality of life

of a community, region, or State; whether there are "new" issues that the agency rule or proposal fails to consider or give proper attention to; or how problems the agency is considering could be solved more efficiently through an alternative or compromise solution. Be as specific as possible.

When public comments reach the agency they are officially logged into the public record (often referred to as the "docket"), and the reviewing staff analyzes the comments so they can consider, during the decision-making process, the significant issues that the public raised.

Interested persons should contact agencies directly for information on the opening and closing dates for comment periods on particular rulemakings, the address they should send comments to, and the number of copies they should submit. (Agency Contacts whom readers can call or write are listed in the appendix.)

3. Final Rule—When the agency finally issues a rule, it must publish the rule in the *Federal Register* along with a statement about the rule's basis and purpose, and a discussion of any significant issues raised during the public comment period. The agency must publish substantive rules at least 30 days before the rule becomes effective. Rules that are exempt from these requirements include those relating to U.S. military or foreign affairs functions or agency matters related to personnel or public property, loans, grants, benefits, or contracts.

In addition, the requirements do not apply to rules stating a general agency policy or to rules dealing with agency organization or procedure. However, some agencies voluntarily apply the above NPRM and public comments requirements to those types of matters. The Act also exempts situations where the agency believes that public participation is "impracticable, unnecessary, or contrary to the public interest." However, when an agency claims such an exemption, it must give its reasons.

C. Freedom of Information Act (1967). The Freedom of Information Act (FOIA) (5 U.S.C. § 552) requires each Federal agency to make available to any person any agency document—whether published or unpublished—that the agency obtains, maintains, or internally produces so long as the material is specifically identified and requested in accordance with procedures established by agency rules. Agencies must usually respond to a request within 10 days of its receipt.

An agency may refuse to disclose a document in cases where the agency is

prohibited by statute from distributing the material, or where the document falls within one or more of the exemptions contained in the Act describing confidential matters and materials. The exemptions are *not* mandatory. The agencies *may* disclose any information that is not made confidential by some other law.

You should precisely word your request so the agency knows exactly what you want. This will make possible quicker and less expensive file searches. If you wish only part of a file or document, identify that part specifically. The FOIA allows agencies to charge searching and copying fees; such fees may vary from agency to agency. Each agency has an FOIA officer from whom you can obtain general information about FOIA requests. The agency contacts listed later in this appendix can refer you to the appropriate person.

FOIA questions can be difficult to answer, and space does not permit a detailed explanation of all of the provisions of the Act. The Department of Justice's Office of Information Law and Policy oversees Federal FOIA matters. For more general information you can contact them at:

Office of Information Law and Policy
Department of Justice
Main Justice Building
10th & Constitution Ave., N.W., Room 5259
Washington, DC 20530
(202) 633-2674

D. Federal Advisory Committee Act (1972). The Federal Advisory Committee Act (P.L. 92-463, 5 U.S.C. Appendix I) gives the public the right to know about meetings between agency personnel and the outside groups they establish to assist them in their work. This Act also controls the number and composition of these groups or committees. Section 10 of the Act requires open meetings and advance public notice of most advisory committee meetings. Agencies may close such meetings if the meeting agenda includes a subject that may be kept confidential under one or more of the exemptions of the "Sunshine Act," which is explained in the following section.

The General Services Administration's Committee Management Secretariat oversees governmentwide Federal advisory committee matters. For more information contact:

Committee Management Secretariat
National Archives and Records Service
Office of the Executive Director
General Services Administration
1100 L Street, N.W., Room 9403

Washington, DC 20408
(202) 357-0019

E. Government in the Sunshine Act (1976). This provision, often referred to simply as the "Sunshine Act," (5 U.S.C. § 552b) is an outgrowth of the Federal Advisory Committee Act and applies to agencies headed by a board or commission. The Act calls for public notice of meetings in these agencies and specifies when the agency may close meetings to the public or may withhold information from meeting notices. Exempt meetings are those dealing with (a) secret matters of national defense, (b) agency personnel rules and practices, (c) confidential commercial or financial information, (d) criminal charges, (e) personal privacy invasion, (f) investigatory records for law enforcement purposes, (g) supervision of financial institutions, (h) previously disclosed agency actions, and/or (i) agency participation in a civil court case.

Interested members of the public should contact the agency directly for information about how to receive meeting notices, how to request that a closed meeting be opened, or where to review available public records of agency meetings.

F. Executive Order 12044 (1978). Thirty-two years after Congress passed the Administrative Procedure Act, President Carter issued Executive Order 12044, Improving Government Regulations (3 CFR, 1978 Comp., p. 152) which was extended by E.O. 12221 (45 FR 44249, July 1, 1981). The Executive Order outlines requirements for executive agencies to manage better their regulatory responsibilities and includes provisions for expanding public participation in the development of significant agency regulations. Executive agencies are required to comply with the Executive Order, and the President asked that independent agencies voluntarily comply. This Executive Order builds upon the requirements of the Administrative Procedure Act by asking agencies to:

- Publish an Advance Notice of Proposed Rulemaking (ANPRM) to solicit public views before formally proposing the regulation for public comment in a Notice of Proposed Rulemaking (NPRM). An ANPRM describes problems or situations that regulatory action might deal with. Public comments on an ANPRM can raise questions and considerations that help the agency decide whether regulating is the best way to control the problem or situation, and if it is considering the proper issues. The ANPRM is sometimes referred to as a "Notice of Inquiry;"

- Allow at least 60 days for public comment at the NPRM stage, as opposed to the customary 30 day period. The Executive Order also requires the agency to analyze and prepare a discussion of significant public comments before approving regulations;

- Send notices to publications in addition to the *Federal Register*, such as consumer newsletters and trade journals, that are read by those who will be affected by the proposed regulation.

- Notify the affected parties directly regarding developments in the proceeding; and

- Hold open conferences or public hearings.

This Executive Order also asks agencies to write and explain regulations clearly and simply in "plain English" so that nonspecialists can interpret the regulations easily.

In addition, the Order also requires agencies to publish, in the *Federal Register*, semiannual regulatory agendas to facilitate public participation. These agendas, which are usually available from their respective agencies, list all of the significant regulations that an agency has under development or scheduled for review. The lists also advise the public of the agency's regulatory action schedule, and thus ensure the earliest possible opportunity for public participation in rulemaking.

At a minimum, the agenda items identified as "major" by executive agencies are reported here in the *Calendar of Federal Regulations*, Appendix III, of this Calendar, "Publication Dates for Agency Semiannual Regulatory Agendas," indicates the dates each agency publishes its agendas in the *Federal Register*.

G. Executive Order 12160 (1979). Executive Order 12160, Providing for the Enhancement and Coordination of Federal Consumer Programs, 3 CFR, 1979 Comp. p. 430 establishes a comprehensive policy to guide all agencies in identifying agency consumer affairs staff who will participate in the development and review of all agency rules, policies, programs, and legislation; and it establishes procedures for the early and meaningful participation by consumers—both individuals and groups—in the development and review of all agency rules, policies, and programs. In addition, the Order requires agencies to produce and distribute informational materials that explain agency services and responsibilities, procedures for consumer participation, and aspects of the marketplace over which the agency has some jurisdiction. Agencies also have to provide information to

consumers who attend agency meetings open to the public.

H. The Regulatory Flexibility Act (P.L. 96-354, 94 Stat. 1164). This law states that it is the policy of the Federal Government to anticipate and, where possible, reduce the impact that regulations may impose on small entities, i.e., small businesses, small organizations, and small governmental jurisdictions. Under the Act, agencies must:

- Publish notice that rules will be promulgated so small entities may participate in their drafting. Each agency is required to publish a regulatory flexibility agenda twice a year. The agenda must give a brief description of any rule the agency expects to propose that is likely to have a significant economic impact on a substantial number of small entities. The agenda must summarize the rule's objectives, its legal basis, the expected timetable for completing action, and invite comment from those who would be subject to the rule. It is expected that many agencies will include a special section of additional material in the semiannual agendas they already publish under E.O. 12044. Agencies must make special efforts to alert small entities "through direct notification or publication of the agenda in publications likely to be obtained by such small entities."

- Prepare draft and final regulatory flexibility analyses for proposed rules that will have an impact on a significant number of small entities. This analysis will include the purpose and reason for the proposal; the number of small firms and organizations to which it would apply; anticipated reporting and recordkeeping requirements; possible overlap and conflict with other Federal rules; and a description of possible alternative means of accomplishing the stated objectives which would minimize the impact upon small entities. The agency must explain why it may have rejected any significant alternative which might have had a lesser economic burden on small entities.

- Publish for public comment approaches such as exemptions or reduced requirements that would offset the disproportionate impact regulations would have on small entities.

- Review existing rules to reduce their impact on small entities. Agency heads are to consider the continued need for the rule, public complaints or comments, the complexity of the rule, possible overlap or conflict with other regulations, and possible changes in technology, economic conditions, or other factors that may make it desirable to modify the regulations. Agencies must

seek public comment during the review of their regulations.

- The Chief Council for Advocacy of the Small Business Administration is responsible for monitoring agency compliance with the Act and is authorized to appear as a "friend of the court" in any court action brought to review any regulation for its effect on small entities.

Agencies published their consumer programs in the *Federal Register* June 1980 (45 FR 38801 *et seq.*, June 9, 1980).

Agency Public Participation Entries

Public participation activities and possibilities are many and varied, depending upon the agency's resources, the suitability of the activity to the type of proceeding the agency is conducting, and the desired participation result.

Each of the 38 Regulatory Council agencies has provided a general summary of its public participation programs, which we have published in the following pages to help you participate in agency activities. Call or write the various agencies for more information. You and your community surely will benefit from your participation in the Federal regulatory process. The Regulatory Council encourages your interest and involvement.

Administrative Conference of the United States (ACUS)

Units That Issue Regulations

The Administrative Conference has no regulatory responsibilities. The only regulations it issues pertain to its organizational duties, found at 1 CFR Parts 301-304. The formal work product of the Conference is reflected in Recommendations and Statements concerning administrative practice and procedure, codified at 1 CFR Parts 305 and 310.

Functions

The Administrative Conference of the United States was established as a permanent independent agency in the Executive Branch by the Administrative Conference Act, 5 U.S.C. § 571-576, enacted in 1964. It is an advisory agency, not a regulatory agency. Its mandate is to "study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies" and to make recommendations for the improvement of those procedures to the agencies, Congress, the President, and the courts. The Office of the Chairman provides advisory and consultative assistance to the government and the public.

Public Participation Summary

The Administrative Conference develops and adopts its Recommendations through open meetings, which receive advance notice in the **Federal Register**. Conference members serve on nine committees, with a staff attorney serving as committee liaison. The Office of the Chairman is now developing a mailing list of persons interested in receiving early notice of ACUS committee meetings.

Funding and Technical Assistance

The Administrative Conference's activities are all open to the public and ACUS enthusiastically solicits public participation; however, none of its activities require funding of participants. Upon request, technical assistance through consultations with staff will be offered if necessary to facilitate participation.

Public Participation Documents

"An Interpretive Guide to the Government in the Sunshine Act" (1978), a staff publication that explains the provisions of the Act, and draws from the legislative history. It has been cited by several court decisions interpreting the Act. (Single copies are available from the librarian in the Office of the Chairman.)

"Guide on Agency Reports Under Executive Order 12044" (1978), a staff publication that explains the President's Order and cites agencies' responses to it. (Available free from the librarian.)

The continuing series of recommendations and reports on administrative procedure is also available from the librarian in the Office of the Chairman. There is normally no charge for such documents if an adequate supply is on hand.

Information Contact

For information on general public participation procedures or for publications requests:

Jeffrey S. Lubbers, Senior Staff Attorney
Administrative Conference of the United States
2120 L Street, N.W., Suite 500
Washington, DC 20037
(202) 254-7020

or
Sue Boley, Librarian
Administrative Conference of the United States
2120 L Street, N.W., Suite 500
Washington, DC 20037
(202) 254-7020

ACUS maintains a mailing list for its annual reports and occasional newsletters and notices of meetings.

Contact either of the persons listed above.

Department of Agriculture (USDA)

Units That Issue Regulations

Agricultural Marketing Service
Agricultural Stabilization and Conservation Service
Animal and Plant Health Inspection Service
Farmers Home Administration
Federal Crop Insurance Corporation
Federal Grain Inspection Service
Food and Nutrition Service
Food Safety and Quality Service
Foreign Agricultural Service
Forest Service
Office of Energy
Office of Environmental Quality
Office of Equal Opportunity
Rural Electrification Administration
Science and Education Administration
Soil and Conservation Service

Functions

USDA establishes national policy regarding the Nation's production, distribution, and consumption of agricultural commodities, foodstuffs, and forest resources, as well as national policy governing the use of agricultural commodities or services for personal or household purposes.

Public Participation Summary

The majority of rulemakings at USDA are informal, or notice and comment actions. Each of the administrative units named above solicits public comments on policy issues under consideration.

The exception is the formal rulemaking process required for commodity marketing orders administered by the Agricultural Marketing Service (AMS). Before holding an evidentiary hearing, AMS performs a prenotice investigation, reviewing public comments framing the issues that must be covered in developing an adequate decision. Following the public hearing and analysis of the record a recommended decision is issued, subject to comment and the filing of exemptions. AMS's final decision is put to a referendum by the regulated producers that the final order will affect.

Each USDA unit listed above has a public participation contact. These are listed below under "Information Contacts."

In addition to the normal educational and informational responsibilities, USDA's public participation office monitors the adequacy of the opportunity for the public to participate in all agency proceedings. The Department public participation staff

and agency public participation staffs have the responsibility for assuring that a thorough and systematic effort is made to obtain timely, informed, and substantive comment from those interested in or potentially affected by a proposed action. Public participation plans are required to accompany each impact analysis: for "significant" decisions, the plans are monitored by the Department's public participation staff while plans for "not significant" decisions are monitored by agency public participation staffs. Plans are sent to public participation staffs in the early developmental stages of an action for staff concurrence.

Efforts to increase participation include increased use of prenotice, development of reimbursement regulations (described below), public meetings and briefings, updating of mailing lists, and more use of "Backgrounders" providing additional information on issues and how to participate.

Recent examples of innovative public participation efforts by USDA include:

- Regulations implementing the Grain Standards Act of 1978. We published for early comment a background study and draft regulations covering complex and controversial new program areas. We received many substantive comments, resulting in substantial revision to and improvement in the regulations which we proposed.
- A Food Safety and Quality Service (FSQS) effort to involve the public early in contemplation of a possible future rulemaking activity on food grading. Recent studies have shown that consumers are confused about what the various food grading systems mean, including USDA grades and "house" grades.

USDA has graded meat, poultry, eggs, dairy products, fresh fruits and vegetables, and related products such as jams and juices since 1917. Grading means separating items of food into different levels of quality, where quality refers to the usefulness, desirability, or marketability of the product.

As phase one of this activity, we have conducted a consumer survey to understand consumer perceptions of grading as it now exists and to understand the benefits to consumers if we were to modify the system. More specifically, we are seeking information on what consumers know about USDA food grading, the extent to which the consumer may be confused about grading, and how we might modify the current grading system to improve its utility to consumers.

We used information from the survey to develop options to present to the public for comment. We made a substantial public information and participation effort, including three public hearings, to ensure that adequate information was widely distributed to elicit a broad range of substantive comment.

Following the hearings, FSQS is now reviewing the record and conducting an analysis on (1) whether to propose new regulations and (2) the best options to proposed.

Funding and Technical Assistance

On January 24, 1980, USDA issued regulations governing reimbursement of qualified individuals and groups for the costs of participating in USDA rulemaking proceedings. Those regulations became effective 30 days later. (A "Handbook for Applicants" is also available through the department or agency public participation staff listed below.) Applicants may qualify for assistance if: they are an individual, or profit or nonprofit group, association, partnership, or corporation; they lack sufficient resources to participate effectively without financial assistance; their participation is likely to contribute to a full and fair determination of the issues; and they are from the area affected by the proposed action.

The head of the agency conducting the rulemaking will make the determination as to whether funds will be used for this purpose. An independent, Department-level evaluation board will make the final decision on awarding funds to a particular applicant.

Those interested in applying for funding should contact the director of public participation or the public participation contact for the agency proposing the specific action.

Public Participation Documents

In addition to the "Handbook for Applicants" for the reimbursement regulations, described above, the Department public participation staff has published a manual for the public on how to participate in USDA decisionmaking. These documents are available through the Department Director of Public Participation listed below.

Information Contact

For further information contact:
Elizabeth A. Webber, Director of
Public Participation
Department of Agriculture
Room 118A, Administration Building
Washington, DC 20250
(202) 447-2113

Agency Public Participation Contacts

Hal Ricker, Assistant to the
Administrator
Agricultural Marketing Service
Department of Agriculture
Room 3068-S, South Building
Washington, DC 20250
(202) 447-8669

Ray Voelkel, Assistant to the Deputy
Administrator for Commodity
Operations
Agricultural Stabilization and
Conservation Service
Department of Agriculture
Room 3755-S, South Building
Washington, DC 20250
(202) 447-7865

Nick Bedessem, Assistant to the
Administrator
Animal and Plant Health Inspection
Service
Department of Agriculture
Room 2139-S, South Building
Washington, DC 20250
(202) 447-2996

Bob Lake
Office of Information
Forest Service
Department of Agriculture
Room 3219-S, South Building
Washington, DC 20250
(202) 447-3760

Barry Flamm
Office of Environmental Quality
Department of Agriculture
Room 412-A, Administration Building
Washington, DC 20250
(202) 447-3965

Joseph Linsley, Chief
Directives Management Branch
Farmers Home Administration
Department of Agriculture
6348 South Building
Washington, DC 20250
(202) 447-4057

Pete Cole, Secretary for the
Corporation
Federal Crop Insurance Corporation
Department of Agriculture
Room 4088-S, South Building
Washington, DC 20250
(202) 447-6975

Don Leathem
Federal Grain Inspection Service
Department of Agriculture
Room 1127 Auditors Building
Washington, DC 20250
(202) 447-3910

William Payne, Deputy Chief
Program Planning and Evaluation
Office of Equal Opportunity
Department of Agriculture
Room 4119, Auditors Building
Washington, DC 20250
(202) 447-7327

Harlan Severson, Director

Office of Information and Public
Affairs
Rural Electrification Administration
Room 4043-S, South Building
Washington, DC 20250
(202) 447-5606
David Dyer
Science and Education Administration
Department of Agriculture
Room 307-A, Administrative Building
Washington, DC 20250
(202) 447-5211
Christine Van Lenten, Agency
Consumer Affairs and Public
Participation Officer
Department of Agriculture
Food and Nutrition Service
Room 758, GHI Building
Washington, DC 20250
(202) 447-8982
Penny Gentilly, Deputy Director for
Public Participation
Food Safety and Quality Service
Department of Agriculture
Room 1168-S, South Building
Washington, DC 20250
(202) 447-7804
Ida Cuthbertson
Soil and Conservation Service
Department of Agriculture
Room 6123-S, South Building
Washington, DC 20250
(202) 447-5810
Jeff Hudgins, Assistant to the
Administrator
Foreign Agricultural Service
Department of Agriculture
Room 5065-S, South Building
Washington, DC 20250
(202) 447-7631

Department of Commerce (DOC)

Units That Issue Regulations

Bureau of the Census
Bureau of Economic Analysis
Economic Development Administration
International Trade Administration
Maritime Administration
Minority Business Development Agency
National Bureau of Standards
National Oceanic and Atmospheric
Administration
National Telecommunications and
Information Administration
Patent and Trademark Office

Functions

The principal mission of the Department is to foster, promote, and develop the foreign and domestic commerce of the United States. The activities of the components of the Department in furthering the mission are broad and varied in scope and cover such diverse areas as: patents; assistance to minority business and economically depressed areas; tourism,

weather, ocean, and atmospheric programs; standards development; promotion of domestic and international trade; the censuses; statistical and economic data and analyses; ship subsidies; and telecommunications policy.

Public Participation Summary

The Departmental units each have different procedures for developing and promulgating regulations, including public notification and participation. These procedures were published in the *Federal Register* on January 9, 1979, as a Department Administrative Order (44 FR 2082). The Administrative Order, entitled "Issuing Departmental Regulations," implements Executive Order 12044, "Improving Government Regulations."

The Consumer Affairs Office (CAO), in conjunction with the Office of Regulatory Policy (OPR) coordinates consumer participation responsibilities throughout the Department. The CAO and consumer contact persons in the operating units will be responsible for assuring that timely and meaningful consumer participation occurs throughout the development and review of the Department's rules, policies, and programs.

Participation mechanisms and special features include:

- Notices of proposed and final rules, programs, and policies published in the *Federal Register*.
- Quarterly notices of upcoming rulemaking activities disseminated to consumer representatives and consumer media by CAO, and to other constituents through the Regional Representatives of the Secretary.
- Informal meetings and briefings arranged between Commerce officials and consumer leaders to discuss emerging or ongoing problems and issues, as well as policy and program developments.
- Funds made available whenever possible (see below).

Specific unit programs for public participation include:

•National Bureau of Standards (NBS). The NBS Center for Consumer Product Technology, in conjunction with Underwriters Laboratories, the American Society for Testing and Materials, the National Fire Protection Association, and the American National Standards Institute, sponsors and maintains a Consumer Sounding Board network to ensure that consumer input on program activity is obtained. The Consumer Sounding Boards are composed of a demographic cross section of consumers convened for the

purpose of providing standards-making organizations with direct consumer involvement in their programs. A panel appointed by the National Academy of Sciences reviews the Center's programs annually. This panel is composed of individuals from industry, academia, government, and consumer interest groups. The Center has also contracted with consumer interest groups to review its program plans regarding major activities such as the Department of Energy-supported "Energy Appliance Program" and the DOC "Consumer Product Information Labeling Program." The Center also works with the National Conference on Weights and Measures, which is composed of State and local government representatives who have responsibility for consumer issues. These representatives are able to provide input on consumer issues relevant to the mission of NBS and the Center. The Center will continue to seek consumer input to its program from all these sources in the future.

•National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS).

The Administrator of NOAA may provide compensation for reasonable attorneys' fees, fees and costs of experts, and other costs of participation incurred by eligible participants in any NOAA proceeding involving a hearing in which there may be public participation. Rules governing NOAA's public participation program are in 15 CFR Part 904.

Through the availability of the Saltonstall-Kennedy Funds, NMFS conducts a grants program under its Fisheries Development and Utilization Program to further the use and development of U.S. fisheries. NMFS encourages proposals in such areas as determining consumer attitudes toward seafood and seafood consumption patterns, studies to determine education and information materials needed for consumers and the best methods of disseminating them, and activities to educate consumers on the nutritional value, economy, handling, and preparation of fish and fish products.

The Marine Fishery Advisory Committee (MAFAC), composed of approximately 25 representatives from industry, academia, and consumer groups, advises NMFS on fishery activities. The MAFAC Subcommittee on Consumer Affairs covers consumer-related fishery activities.

Under the authority of the Fishery Conservation and Management Act of 1976, eight Fishery Management Councils were established. The members of the Council are required by the Act to have fisheries expertise. The

majority of the members are appointed by the Secretary, based upon the recommendations of the Governors of the coastal States. These appointments include consumer members. NMFS consumer affairs personnel are actively pursuing strengthened consumer representation on these Councils. In addition, NMFS is planning regional workshops to be held in conjunction with the Councils to encourage and expand consumer participation.

•National Telecommunications and Information Administration (NTIA).

NTIA is in the process of establishing an advisory committee that will offer advice on the Public Telecommunications Facilities Program's (PTFP) grant applications and on the development of public telecommunications policy. The proposed advisory committee will have 20 members: NTIA will reserve a seat for a representative of a public interest or consumer organization.

Funding and Technical Assistance

The Department's General Counsel has decided that, where no statutes forbid establishment of a public participation funding program, Department funds may be used for such funding when the participation is found necessary and when lack of funding would preclude the participant from participating.

The Department will be giving special attention to developing new procedures and funding sources to finance consumer participation in the Department's regulatory proceedings.

The Department will make funds available whenever possible to enable consumer representatives to give in-depth advice and assistance on major policy or program initiatives. (Recent examples include the Department's development of recommendations on the problem of product liability, where we funded a series of Consumer Forums and a pilot project on voluntary consumer product information labeling, for which a national consumer organization was a consultant to the Department.) NTIA is in the process of developing rules to implement a public participation reimbursement program and will finalize the rules this fall. Also NTIA prepares informational materials explaining the process of obtaining matching grants for telecommunications facilities. This information is distributed to individuals, public interest groups, the trade press, publishers, journals, and other media.

NMFS plans to hold individual consultations and workshops for consumer interest groups to provide technical assistance in preparing

proposals for cost-sharing funding under the Fisheries Financial Assistance Program.

Public Participation Documents

During FY 1981, ORP and CAO will develop general guidelines for consumer participation for use throughout the Department.

Information Contact

Meredith Fernstrom, Director of
Consumer Affairs
Department of Commerce, Room 5889
Washington, DC 20230
(202) 377-5001

Department of Education (ED)

Units That Issue Regulations

None. The authority to issue regulations has not been delegated to any ED units. Regulations are prepared by the various ED offices and submitted to the Secretary of Education for approval and issuance.

Functions

The Department of Education is a newly created executive department established by the Department of Education Organization Act (P.L. 96-88, October 17, 1979; 20 U.S.C. 3401 *et seq.*). The statute transfers to the new Department certain functions of five other departments and the National Science Foundation, including:

(a) approximately 150 programs of Federal assistance to education and rehabilitative services for handicapped individuals previously administered by the Department of Health, Education, and Welfare (HEW), as well as the related functions of the HEW Office for Civil Rights;

(b) all functions relating to the operation of overseas schools for dependents of the Department of Defense (target date for transfer is October 1, 1981);

(c) all functions of the Secretary of Labor or the Department of Labor under Section 303(c)(2) of the Comprehensive Employment and Training Act relating to certain migrant education programs;

(d) all functions relating to certain science education programs transferred from the National Science Foundation;

(e) the law enforcement education program and the law enforcement internship program previously administered by the Department of Justice; and

(f) all functions of the Secretary of Housing and Urban Development and of the Department of Housing and Urban Development relating to college housing loans under Title IV of the Housing Act of 1950.

Public Participation Summary

In some instances ED may publish an ANPRM in order to permit the earliest possible public participation in the regulatory process. ED schedules a public comment period of 60 days or more for most NPRMs, although the Secretary of Education may waive public comment for minor technical regulations.

Public hearings may be held throughout the United States in convenient locations after ED publishes an NPRM in the *Federal Register* in order to obtain comments from members of the public concerned with the regulations. ED may also make mass mailings to State and local education officials to solicit comments on proposed regulations. Press releases alert the news media to significant ED regulations. ED designs other means of obtaining public participation for particular regulations (e.g., sign language interpreters at public hearings or distribution of information in a foreign language).

Funding and Technical Assistance

No funds are available for compensation to the public for payment of costs of participation in ED's regulatory development process. ED employees provide technical assistance to the public.

Public Participation Documents

None available at this time. However, ED plans to publish a semiannual regulatory agenda beginning December 1, 1980. This document will provide important information on ED regulations under development that may lead to increased public participation.

Information Contact

For information on regulations:

Dr. A. Neal Shedd, Director
Division of Regulations Management
Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202
(202) 245-7091

For public participation activities:

Jeanne Park, Acting Director
Division of Information Services
Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202
(202) 245-8564

Department of Energy (DOE)

Units That Issue Regulations

Board of Contract Appeals
Conservation and Solar Applications
Economic Regulatory Administration
Office of the Controller

Office of Equal Opportunity
Office of Minority Economic Impact
Resource Applications

Functions

The President established DOE in 1977 to consolidate the major energy programs scattered throughout the government into a unified agency that could provide a national energy policy. DOE has played a major role in developing regulatory initiatives for energy policy, including a program for solar energy, plans for gasoline rationing, a program for phased decontrol of crude oil, and a program for import reduction.

Public Participation Summary

DOE responded to E.O. 12044 with an agency Order making certain public participation procedures mandatory. Recision of that DOE Order has been proposed; however, the provisions relating to public participation contained in the Department Order should remain unaffected. Some of these procedures include:

- notification of interested parties, the Governor of each State, DOE regional representatives, and appropriate Federal advisory committees;
- distribution of appropriate notices or press releases describing the regulatory action to trade journals, newspapers, and newsletters read by interested parties;
- public hearings and conferences with interested groups and individuals (with adequate advance notification), where appropriate; and
- provision for one or more public hearings, preceded by at least 14 days notification, for all significant regulations proposed.

In response to a later Executive Order, No. 12160, which provides for the enhancement and coordination of Federal consumer programs, DOE has drafted a plan and is in the process of implementing a departmentwide effort to institutionalize the provisions of that Order.

In addition, the Department conducts citizen participation workshops. It is the responsibility of each program area to conduct those workshops that pertain to their particular program area.

When the Department solicits public comments, it requires full, verbatim transcripts for all public hearings. These transcripts are used in all proceedings where citizens comment for the official record. Our Office of Consumer Affairs publishes public comments in some issues of the "The Energy Consumer."

The Office of Consumer Affairs has the primary responsibility for managing and coordinating the public

participation efforts of the Department. However, DOE program areas are directly accountable for regular and substantive public participation programs.

Funding and Technical Assistance

DOE is prohibited by Congress from providing funding for public participation. Therefore, no funding is available.

Public Participation Documents

The following document is available from the Office of Consumer Affairs: "The Energy Consumer."

Information Contact

The Office of Consumer Affairs maintains a mailing list for distribution. In addition, citizens with specific interests can have their names placed on specialized mailing lists. The Technical Information Center at Oak Ridge, Tennessee, also has a mailing list for its "Energy Meetings" bulletin. For more information contact:

Polly W. Craighill, Director
Consumer Impact Division
Office of Consumer Affairs
Department of Energy
Forrestal Bldg., Rm. 8G-087
1000 Independence Avenue, S.W.
Washington, DC 20585
(202) 252-5866

Hotline Numbers: For problems with getting gasoline or heating oil, or to report excessive dealer prices: (800) 424-9246. In the Washington, DC area (202) 653-3437.

For questions and comments on alcohol fuel technology: (800) 535-2840. In Louisiana (800) 353-2870.

Department of Health and Human Services (HHS)

Units That Issue Regulations

Assistant Secretary for Human Development Services
Health Care Financing Administration
Office of Child Support Enforcement
Office of the Inspector General
Office of the Secretary
Social Security Administration
U.S. Public Health Service

Functions

HHS is the domestic funding agency for 300 programs that focus on assistance to the economically disadvantaged, social security, retirement, and social service. The agency also regulates standards for food and drug safety and performs basic and applied research in health.

Public Participation Summary

HHS frequently publishes an ANPRM to allow the earliest possible public participation in agency rule proposals. The Department also frequently holds regional hearings and meetings to obtain public input in decisionmaking activities. These public meetings are held at times and places most convenient for those affected by the regulations. Accommodations are made to allow certain groups to participate in meetings that they might not be able to attend otherwise.

A pilot program of service desks will be opened in four regions to answer questions from manufacturers about Food and Drug Administration (FDA) regulations. The desks, located in East Orange, New Jersey; Chicago, Illinois; Atlanta, Georgia; and Santa Ana, California, will respond to questions dealing with problems such as how to fill out applications and other government forms, what regulations must be followed to market a new product, and how FDA regulations affect manufacturers' products or manufacturing processes.

Finally, in response to the President's specific concern about the impact of Federal regulations on small businesses, the Food and Drug Administration is attempting to give special assistance to small businesses in their attempt to decipher the various government regulations with which they must comply. The FDA will begin two programs to simplify regulations. FDA also will be appointing an official to the Commissioner's staff to "help assure a consistent agency-wide policy for small business."

Funding and Technical Assistance

HHS is currently developing a proposed regulation that will allow for compensation to the public for participation in the regulations development process. FDA published a final regulation on public participation funding in the October 12, 1979 Federal Register. The name and address of the FDA contact person is listed below under "Information Contact."

Public Participation Documents

None available at this time. However, HHS's semiannual regulatory agenda provides important information that may lead to increased public participation. This document exceeds the requirements of E.O. 12044 by identifying not only "significant" regulations but all regulations under development or consideration at the Department. In addition, program regulations are listed by the types of

services provided and their effect upon organizations, institutions, and individuals. Over 400 regulations are presented in each agenda. The Department's most recent agenda was published on June 13, 1980.

Information Contact

The Departmentwide contact person for public participation activities is:

Bill Wise, Assistant Secretary for Public Affairs
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201
(202) 245-1850

For information on proposed regulations currently being drafted for compensation of citizen participation contact:

Glenn Kamber, Director
Regulations Management Unit
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201
(202) 245-3161

For information on FDA public participation funding contact:

Alex Grant, Special Assistant to the Commissioner on Consumer Affairs
Food and Drug Administration
Room 1685, HF-7
5600 Fishers Lane
Rockville, MD 20857
(301) 443-5004

Department of Housing and Urban Development (HUD)

Units That Issue Regulations

Community Planning and Development (CPD)
Fair Housing and Equal Opportunity (FH&EO)
Government National Mortgage Association (GNMA)
Housing
Immediate Office of the Secretary
Neighborhoods, Voluntary Associations, and Consumer Protection (NVACP)
New Community Development Corporation (NCDC)

Functions

HUD's national goal is to ensure that the basic rights of all consumers are considered, respected, and protected in all the agency's housing and community development activities. The agency hopes to achieve this goal through promoting viable communities, providing decent housing, achieving equal opportunity, and effectively coping with natural disasters.

Public Participation Summary

The Office of Citizen Participation, under the Assistant Secretary for NVACP, reviews the public participation requirements of key rules.

HUD has implemented several of the Administration's recommendations for extended public participation, including publishing ANPRMs, extending public comment periods to 60 days, holding public hearings on proposed regulatory changes, and announcing regulatory changes in publications oriented toward special interest groups. HUD's mailing list numbers about 78,000 individuals.

Funding and Technical Assistance

No funding is available at this time. We published an ANPRM on Funding Public Participation in rulemaking on March 4, 1980. Comments are being evaluated.

Public Participation Documents

24 CFR Parts 10 and 15. Part 10 is HUD's procedures for rulemaking that voluntarily adopt 5 U.S.C. 553 for public benefit programs, and provide for rulemaking petitions.

Part 15 discusses the availability of documents and the fees charged for search and reproduction of materials.

Information Contact

Father Geno Baroni, Assistant Secretary for Neighborhoods, Voluntary Associations, and Consumer Affairs
Department of Housing and Urban Development
451 7th Street, S.W., Room 4100
Washington, DC 20410
(202) 755-0950

Department of the Interior (DOI)

Units That Issue Regulations

Bureau of Indian Affairs
Bureau of Land Management
Bureau of Mines
Bureau of Reclamation
Fish and Wildlife Service
Geological Survey
Heritage Conservation and Recreation Service
National Park Service
Office of Minerals Policy and Research Analysis
Office of Surface Mining and Enforcement
Office of Water Research and Technology

Functions

The functions of the Department of the Interior include:

- management of lands and water resources, including access to publicly

owned energy and other mineral resources;

- regulation of energy and mineral development;
- protection of fish and wildlife populations and their habitat;
- protection and interpretation of historic, archaeological, and other cultural or recreation resources of national significance;
- advocacy for American Indian and Alaska Native peoples for whom the Federal Government has a trust responsibility; and
- oversight of Federal programs delivered to the various Territories of the United States.

These responsibilities of the Department are carried out through the day-to-day operations of its eleven major bureaus, services, or offices. These offices are grouped by related functions under four Assistant Secretaries—Land and Water Resources; Energy and Minerals; Fish, Wildlife and Parks; and Indian Affairs to whom the cross-cutting and coordinative staffs report. The Office of Territories reports directly to the Secretary, and there is an Assistant Secretary for Policy, Budget, and Administration.

The Department of the Interior acts as steward for the Nation's storehouse of natural resources. As such, the Department's missions are carried out for all citizens, and any member of the public has a potential interest in the Department's business.

Public Participation Summary

Because of the nature of Interior's business—for example, as a land management agency or as a regulator of the surface effects of mining—much of the public's concern with activities naturally arises locally or regionally rather than in Washington. For this reason, the Department of the Interior has established a policy that its managers at all levels must consider the needs of the public, and must make allowance for the fact that the public may have an interest in participating in the development and review of not only rules, policies, and programs, but also of program activities on the regional or local levels. For this reason, program managers and support staff at any level can become the "responsible official" for a public participation plan, which is integrated with the steps necessary to reach final decisions, and the implementation of that plan.

Rulemaking procedures are prescribed by the Administrative Procedure Act, E.O. 12044, and in Part 318 of the Department Manual. These procedures call for early notice of intent to write

regulations, not only in the Federal Register, but by press release, and where applicable, by mailings to groups and individuals, and other means.

For major policy, program, or other Secretarial level decisions, the Department has specific procedures requiring input on options with Department-wide review before presentation to the Secretary. Part 301 of the Department Manual prescribes the steps for Secretarial Issue Documents. These instructions include a requirement to display the kind and amount of public participation in the preparation of options for decision.

Every 6 months, the Department publishes a semiannual agenda of regulations pending or planned, as do other Federal agencies.

A continuing source of information about Department activities is the public process in producing environmental impact statements. The Department initiates, monitors, or reviews dozens of such statements annually, and a variety of agencies widely publicize and discuss the statements. Public comments on a wide range of natural resource concerns are registered, and become built-in considerations for Departmental managers.

Officials throughout the Department look for opportunities to improve the general level of public knowledge about significant authorities and activities of the Department, with provision for recorded comment and feedback. Such activities include periodic publication of calendars of anticipated actions printed in the popular and official press; periodic open public meetings; periodic "open office" time; and other public involvement techniques which, being regularly scheduled, could lessen the need for the number of separate public participation plans or events.

The best point of access to the Department of the Interior for an individual anywhere in the country is a public information officer for the bureau or office carrying out the activity of interest. If a person does not know which unit is responsible for his/her area of concern, the best beginning point of contact would be the Secretary's Public Affairs Office or the Department Coordinating Officer for Public Participation and Consumer Affairs. These contacts will direct the citizen to the best source of information about his/her concern, including information about the procedures and responsible officials that govern the decisionmaking or activity about which he/she is concerned.

Funding and Technical Assistance

The Department's Bureaus and Officers have supplied technical assistance in their varied fields of expertise. Traditional recipients have been State and local officials who shared administration responsibility for Department programs. But, for example, citizens or groups interested in reviewing or contributing to a specific element of their State's Comprehensive Outdoor Recreation Plan can obtain reports and technical information and even visit sites as work schedules of knowledgeable personnel permit. On a similar basis, bureaus/offices can guide interested people to available information, and many units provide de facto technical assistance amounting to consultation on specific problems. It is important in this context to remember that the preparation of an environmental impact statement, or other major reports, or a rulemaking decision may extend over several years.

If a citizen does not know who to contact, he/she should ask the closest Public Affairs Office of the Department. Such assistance can be provided at various levels of the agency. It usually occurs during interaction on agency programs through sharing of scientific data, answering procedural questions, assisting in preparation of application forms, etc. Bureaus and offices make every effort to provide appropriate technical assistance to public organizations and to the general public upon request, in accordance with existing laws, regulations, policies, and administrative procedures.

Certain laws (for example, Section 520 of the Surface Mining Control and Reclamation Act) provide for payment of attorney fees and expert witness fees for intervenors.

Public Participation Documents

Departmental Manual Chapter, "Public Participation in Decision-Making: (Part 301, Departmental Chapter 2, DM2)" is available from the Office of the Assistant Secretary for Policy, Budget, and Administration listed below.

Information Contact

Ms. Cecil Hoffman, Staff Assistant to the Assistant Secretary for Policy, Budget, and Administration and Public Participation Coordination Officer

U.S. Department of the Interior
18th and C Streets, N.W.
Washington, DC 20240
(202) 343-5106

or
Harmon Kallman, Acting Director of

Public Affairs
U.S. Department of the Interior
18th and C Streets, N.W.
Washington, DC 20240
(202) 343-6416

Department of Justice (DOJ)**Units That Issue Regulations**

Antitrust Division
Bureau of Prisons
Civil Rights Division
Criminal Division
Drug Enforcement Administration
Federal Bureau of Investigation
Immigration and Naturalization Service
Land and Natural Resources Division
Office of the Attorney General
United States Parole Commission

Functions

The DOJ enforces criminal laws and laws against subversion; ensures healthy business competition; safeguards the consumer; and enforces drug, immigration, and naturalization laws. The DOJ also plays a significant role in crime prevention, crime detection, and rehabilitation of offenders. In addition, the Department represents the United States in the Supreme Court and generally renders legal advice and opinions upon request to the President and heads of executive departments.

Public Participation Summary

Within the DOJ, none of the divisions or components that engage in regulatory activity operate under formalized public participation procedures.

As a law enforcement agency, the DOJ does not engage in much informal rulemaking activity and, therefore, has not centralized the function of providing information about public participation in such activity. However, pursuant to Attorney General Order No. 831-79, May 25, 1979, the Associate Attorney General and the Deputy Attorney General exercise oversight over components' regulatory agendas with administrative support from the Office of the Administrative Counsel, Justice Management Division.

Funding and Technical Assistance

The DOJ has limited funds for the purpose of obtaining the public's views through advisory committees and the sponsoring of conferences and workshops that contribute to departmental decisionmaking.

Public Participation Documents

The DOJ's consumer plan was published at 45 FR 39209 on June 9, 1980.

Information Contact

For referral to a knowledgeable official on the agency's semiannual regulatory agenda and any related public activity in the appropriate DOJ component contact:

William Snider, Administrative Counsel

Justice Management Division
U.S. Department of Justice
Washington, DC 20530
(202) 633-3452

The Department maintains general public information mailing lists. Any person who wishes to have his or her name included may contact:

Judy Beeman
Office of Public Affairs
U.S. Department of Justice, Room 5114
Washington, DC 20530
(202) 633-2014

Department of Labor (DOL)**Units that Issue Regulations**

Bureau of International Labor Affairs
Bureau of Labor Statistics
Employment and Training Administration
Employment Standards Administration
Labor-Management Service Administration
Mine Safety and Health Administration
Occupational Safety and Health Administration

Functions

DOL is primarily concerned with the quality of work-life in America and with the worker/employer-job relationship, including working conditions, pay, job and pay discrimination, job training, collective bargaining, workers compensation, and unemployment insurance. In addition, DOL administers the Labor Management Reporting and Disclosure Act and works with the Internal Revenue Service to administer the Employee Retirement Income Security Act of 1974.

Public Participation Summary

DOL develops a public participation plan for each significant rule proposed. Each of the administrative units named above has designated a consumer representative to handle inquiries and complaints; and the Special Assistant to the Secretary for Consumer Affairs coordinates public participation for all the units and the outreach activities of DOL's regional offices.

The Mine Safety and Health Administration (MSHA) and the Occupational Safety and Health Administration (OSHA) use advisory

committees set up on an ad hoc basis to determine the need for regulatory action, as well as the content of a needed regulation. Any member of the public may request an informal public hearing in connection with the development of the regulation. MSHA and OSHA also are authorized to implement temporary standards under action circumstances.

Funding and Technical Assistance

None.

Public Participation Documents

None.

Information Contact

For general information or referral to the consumer representative for any administrative unit named above, contact:

Judy Sorum, Special Assistant to the Secretary for Consumer Affairs
Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210
(202) 523-9184

Department of Transportation (DOT)

Units That Issue Regulations

Federal Aviation Administration
Federal Highway Administration
Federal Railroad Administration
National Highway Traffic Safety Administration
Office of the Secretary
Research and Special Programs Administration
St. Lawrence Seaway Development Corporation
U.S. Coast Guard
Urban Mass Transportation Administration

Functions

The Department of Transportation (DOT) fosters the development and maintenance of safe, effective transportation systems to move people and goods. Each administrative unit named above has separate activities to reach the public, depending upon the nature of ongoing proceedings. DOT's Office of Consumer Liaison coordinates the public participation activities of all the administrative units.

Public Participation Summary

The Department has taken a number of major steps to enhance its public participation programs. First, based on suggestions we received at the Department's Conference on Transportation and the Consumer, held in May 1979, the Department issued an ANPRM (44 FR 46971, August 9, 1979). The ANPRM solicited the public's comments to help the Department

review and evaluate citizen participation in the transportation planning and project development process. Second, the Department, along with other government agencies, published its "Final Consumer Program" (45 FR 39144, June 9, 1980), which contained an extensive section on public participation in rulemaking and decisionmaking in policies and programs. The Department's operating administrations published draft consumer programs in the same issue of the *Federal Register*. In addition, the Department is reviewing its experience with public hearings in rulemaking proceedings to improve them.

An appendix to the Department's Semi-Annual Regulations Agenda contains information on how interested persons may include their names on an agency's mailing list to receive documents issued within the Department. Other appendices list the locations and hours of operation of the Department's public rules dockets and the addresses and phone numbers of persons who can provide general information on DOT's rulemaking process. Persons who want to be placed on a mailing list for future copies of the agenda should call or write the appropriate office listed below under "Information Contact."

The Office of Consumer Liaison publishes a newsletter of general public interest. To receive it, call or write this office, which is listed below under "Information Contact."

Funding and Technical Assistance

In the past, DOT operated a demonstration program in the National Highway Traffic Safety Administration (NHTSA) for certain rulemaking proceedings. The program provided financial assistance to individuals and groups who otherwise would have been unable to participate effectively in NHTSA proceedings. Recently, however, funding for the demonstration program was eliminated by the action taken by Congress on the Department's FY 1980 appropriations.

Public Participation Documents

The "Transportation Consumer Newsletter" is available from DOT's Office of Consumer Liaison.

The "Department of Transportation Regulatory Policies and Procedures" (44 FR 11034, February 26, 1979), and the "Semi-Annual Regulations Agenda" are available from the Office of the General Counsel. (See "Information Contact" below.)

Information Contact

Contact the following office for information on any DOT activity:

Office of Consumer Liaison
Department of Transportation
400 Seventh Street, S.W., Room 9402
Washington, DC 20590
(202) 426-4518

Contact the following office for copies of DOT's "Regulatory Policies and Procedures" and "Semi-Annual Regulations Agenda":

Office of Regulation and Enforcement
Office of the General Counsel, C-50
Department of Transportation
400 Seventh Street, S.W., Room 10421
Washington, DC 20590
(202) 426-4723

Department of the Treasury

Units That Issue Regulations

Bureau of Alcohol, Tobacco and Firearms
Bureau of Government Financial Operations
Bureau of Public Debt
Comptroller of the Currency
Internal Revenue Service
Office of Revenue Sharing
Office of the Secretary
U.S. Customs Service
U.S. Savings Bonds Division
U.S. Secret Service

Functions

The Department of the Treasury collects, disburses, and ensures the integrity of government revenues.

Public Participation Summary

The Department of the Treasury has the following unique public participation and outreach activities:

- Public speaking by Treasury officials on Treasury regulatory activities.
- Public hearings scheduled by IRS if even one party so requests.
- Public hearings held in cities outside of Washington with evening hearing times available upon request.
- Developing "consumer forums," arranging informal meetings, or providing special briefings for consumers and their representatives.

Funding and Technical Assistance

The Department of the Treasury supplies economic data and reports to researchers, private and public sector officials, students, and consumers at little or no cost to the recipients.

Public Participation Documents

- Agenda of pending regulations, published on a monthly basis by IRS. The Bureau of National Affairs reprints and circulates it to subscribers.

- ATF sends ANPRMs, NPRMs, and Treasury Decisions to those who can be identified as the interested party within an impacted industry.

- Direct distribution of regulatory documents issued by the Comptroller of the Currency to all national banks.

- Publication of all Customs NPRMs and Final Rules in the Customs Bulletin, which is mailed to any individual expressing an interest in Customs regulatory activities. Customs also furnishes information to the American Importers Association, which publishes and distributes it as the bulletin "Import Alert."

- Publication of the "Consumer Affairs Handbook," available from the Special Assistant to the Secretary (Consumer Affairs).

- No general materials available. For information on specific regulatory activities, write or call the Information Contact listed below.

Information Contact

Steven L. Skancke
Deputy Executive Secretary
Department of the Treasury
Room 3408, Main Treasury
Washington, DC 20220
(202) 566-2269

Individuals and interest groups interested in adding their names to the general public information mailing list may do so by writing to the agency's Deputy Executive Secretary listed above.

Environmental Protection Agency (EPA)

Units That Issue Regulations

Office of Air, Noise, and Radiation
Office of Enforcement
Office of Pesticides and Toxic Substances
Office of Planning and Management
Office of Research and Development
Office of Water and Waste Management

Functions

The President created EPA in 1970 to administer environmental laws, conduct research and demonstration projects, establish and enforce standards, monitor pollution in the environment, and assist State and local governments in their efforts to restore and protect the environment. EPA's regulatory responsibilities are in the areas of air, water, toxics, pesticides, and solid waste management programs.

Public Participation Summary

The Agency develops an individual outreach plan for most proposed regulations. The Agency develops a

special contact list, publishes an ANPRM, provides informal open meetings and workshops to explore regulatory issues, and then develops a summary of public viewpoints and preferences for inclusion into the final decisionmaking process. EPA also provides feedback on the outcome of public involvement to all those who participated in the above.

There is no required format for submitting a rulemaking petition, and we do not require multiple copies of public comments, except in special cases to expedite Agency review of comments.

The Administrator's Special Assistant for Public Participation is developing a policy for increased public participation (see below, under "Public Participation Documents"), as well as a pilot program to provide compensation for participation in certain rulemaking activities. The Office of Public Awareness is developing a proposed consumer plan to provide for increased consumer participation in EPA activities.

Funding and Technical Assistance

EPA is developing a pilot program to compensate selected participants for their participation in six specific forthcoming rulemakings, including rules issued under the Clean Air Act, the Clean Water Act, and the Toxic Substances Control Act. The general qualifications for compensation provide that (1) the participant would be unable to participate effectively without Agency compensation; and (2) the participant could make a useful contribution to a full and fair assessment of the issues involved.

Those individuals and groups participating in rulemaking proceedings regarding the control of hazardous chemical substances and mixtures not only must meet the above two requirements but also must not have a direct economic interest in the outcome of the proceeding.

Public Participation Documents

EPA is reviewing public comments on the "Proposed Policy on Public Participation" (45 FR 28912), which sets forth EPA's plan for increasing public participation. The Agency will write a Responsiveness Summary and send it to all participants. EPA then will make decisions on how to incorporate these comments before the final Agency review.

"Improving Environmental Regulations" (44 FR 30988) describes EPA's regulatory development procedures and responds to E.O. 12044.

EPA has published a document on public participation in a specific program, entitled "Public Participation in Programs under the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Clean Water Act" (44 FR 10286). EPA has published numerous other free books and pamphlets on several significant regulations and on some of its programs. These publications are available from the Office of Public Awareness.

Information Contact

Sharon Francis, Special Assistant to the Administrator for Public Participation (A-100)
Environmental Protection Agency,
401 M Street, S.W., Room 1227 West Tower
Washington, DC 20460
(202) 245-3066

To receive copies of agency publications call or write:

Joan Martin Nicholson, Director
Office of Public Awareness (A-107)
Environmental Protection Agency
401 M Street, S.W., Room 311 West Tower
Washington, DC 20460
(202) 755-0707

James Keys
Public Information Center (PM-215)
Environmental Protection Agency
401 M Street, S.W., Lobby West Tower
Washington, DC 20460
(202) 755-0707

To have your name included on the Agency's mailing list, call or write:

Carol Hummer
Constituent Coordinator (A-107)
Environmental Protection Agency
401 M Street, S.W., West Tower
Washington, DC 20460
(202) 755-0710

The Office of Pesticides and Toxic Substances' Industry Assistance Office will provide information concerning the implementation of the Toxic Substances Control Act. Call or write:

John Ritch
Industry Assistance Office (TS-795)
Environmental Protection Agency
401 M Street, S.W., East Tower
Washington, DC 20460
(202) 554-1404
(800) 424-9065

Equal Employment Opportunity Commission (EEOC)

Units that Issue Regulations

Field Services
Office of Policy Implementation
Systemic Programs

Each Commissioner also may issue regulations with the approval of the majority of the full Commission.

Functions

EEOC's responsibility is to enforce Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin, and the Equal Pay Act and the Age Discrimination in Employment Act.

Public Participation Summary

EEOC involves affected Federal agencies, State and local governments, business, labor unions, public interest organizations, civil rights groups, and various individuals early in the process of developing proposed regulations. The EEOC's outreach plan is a very extensive one, and includes holding public conferences and hearings, sending press releases and notices to special interest publications, and publishing ANPRMs to allow public comments at the earliest rule development stage.

Funding and Technical Assistance

None.

Public Participation Documents

"Mission" is a Commission publication issued intermittently as the need arises to inform the public of recent significant activities and achievements of the EEOC affecting equal job opportunities.

Information Contact

Karen Danart, Acting Director
Office of Policy Implementation
2401 E Street, N.W.
Washington, DC 20506
(202) 634-7060

Federal Emergency Management Agency (FEMA)

Units That Issue Regulations

Federal Insurance Administration
Office of Disaster Response and Recovery
Office of Plans and Preparedness
United States Fire Administration

Function

The Federal Emergency Management Agency was established by the President with the approval of Congress pursuant to Reorganization Plan No. 3 of 1978 to provide a single point of accountability for all Federal emergency preparedness, mitigation, and response activities. The Agency is chartered to enhance the multiple use of emergency preparedness and response resources at the Federal, State, and local levels of

government in preparing for and responding to the full range of emergencies—natural, manmade, and nuclear—and to integrate into a comprehensive framework activities concerned with hazard mitigation, preparedness planning, relief operations, and recovery assistance.

Public Participation Summary

The Federal Emergency Management Agency invites public participation in its rulemaking as a matter of routine, even when not required to do so by the Administrative Procedure Act or by Executive Order 12044; for example, even on an agency organization and procedure matter (such as claims collection), we will request public comment in the process of preparing a final or interim rule.

The Agency also has a Consumer Program under Executive Order 12060 which seeks to involve consumers at all stages of the rulemaking process.

FEMA has adopted extensive regulations regarding actions taken in floodplains and wetlands. An important part of the regulation involves notification of the public at an early time in order to give interested parties a chance to participate in the rulemaking process (44 CFR Part 9.8).

In connection with its review of State and local radiological emergency response preparedness for nuclear power plants, FEMA will require that before it approves State plans there be a public meeting in the vicinity of the power plant to acquaint the public with the content of the plans and to receive suggestions.

In connection with flood elevation determinations which are used in making decisions in the National Flood Insurance Program, FEMA publishes the proposed flood elevation determinations in the Federal Register and in local newspapers; in addition, FEMA maintains the docket on comments in the specific involved community.

FEMA also consults extensively with groups of State and local organizations, such as the National Emergency Management Association, United States Civil Defense Council, State insurance regulators, various fire organizations, and others.

Funding and Technical Assistance

At the present time we have no funding program. Further, it is most likely that there will be some sort of a restriction on funding, at least as a general provision in the appropriations act governing this Agency.

Public Participation Documents

None.

Information Contact

William L. Harding
Federal Emergency Management Agency
Office of General Counsel
1725 I Street, N.W.
Washington, DC 20472
(202) 634-4113

General Services Administration (GSA)

Units That Issue Regulations

Automated Data and Telecommunications Service
Executive Committee on the Federal Register
Federal Property Resources Service
Federal Supply Service
Information Security Oversight Office
National Archives and Records Service
Office of Acquisition Policy
Office of General Counsel
Office of Human Resources and Organization
Office of Plans, Programs, and Financial Management
Public Buildings Service
Transportation and Public Utilities Service

Functions

GSA is the Federal Government's business manager. GSA's regulations establish other agencies' procedures on matters such as managing Federal property and records; constructing and operating buildings; obtaining and distributing supplies; using and disposing of property; managing transportation, traffic, and communications; stockpiling strategic materials; and managing the Government's automatic data processing resources program. While GSA is not a major regulatory agency, when agencies apply GSA regulations (for example, the rule on smoking in public buildings), the rules do have an effect on the public.

Public Participation Summary

GSA's procedures are designed in the spirit of openness to gain effective public participation rather than to satisfy specific legal requirements. For each proposed regulation, we select methods of public notice and participation based on the subject of the proposed regulation and the interests of the groups and sectors that will be affected by it. For instance, we may publicize some proposals in industry and trade publications, while regulations about facilities for the handicapped may be made available in Braille and in recorded tape cassettes. In every case, the notice tells how to

participate in GSA's review of a regulation and who to contact.

Funding and Technical Assistance

No funding is available for public participation in GSA's regulatory process. In some cases, GSA employees may be able to give technical assistance to the public concerning a proposed regulation.

Public Participation Documents

"Consumer Resource Handbook." The Handbook provides a directory of Federal agencies and includes a list of private consumer organizations involved in citizen participation and representation.

Federal Register, December 10, 1979 (Volume II). This **Federal Register** volume contains the proposed consumer programs of 30 Federal agencies. Each draft program contains that agency's plan to provide for public involvement in development of its rules. The Handbook and the **Federal Register** volume are available free from GSA Consumer Information Center, Boulder, CO 81009. Please mark "Free" on the envelope to speed your order.

GSA's Federal Information Centers provide a toll-free telephone point of contact in more than 85 cities for information and referral to all Federal Government activities, including public participation opportunities. Federal Information Centers are listed under "U.S. Government" in the telephone directory white pages.

Information Contact

For general information about regulations being developed call or write:

Anthony Artigliere
Directives Management Branch
General Services Administration
18th & F Streets, N.W.
Washington, DC 20405
(202) 566-0666

For information on public participation in general:

David F. Peterson
Director of Consumer Affairs
General Services Administration
18th & F Streets, N.W., Room G-142
Washington, DC 20405
(202) 566-1794

Nonprofit consumer organizations can enter their names on a special mailing list by contacting:

Teresa Nasif
Consumer Information Center
General Services Administration
18th & F Streets, N.W., Room G-142
Washington, DC 20405
(202) 566-1794

GSA Hotline for reporting fraud or violations:

(800) 424-5210
(202) 566-1780—Washington, DC metro area only.

Or write:

GSA Hotline
P.O. Box 28341
Washington, DC 20005

Dial-A-Reg: Call the following numbers in the city nearest you for information on selected documents scheduled for publication in the next day's **Federal Register**.

(202) 523-5022—Washington, DC
(312) 663-0884—Chicago, IL
(213) 688-6694—Los Angeles, CA

National Credit Union Administration (NCUA)

Units That Issue Regulations

All regulations are issued by the NCUA Board.

Functions

NCUA is responsible for chartering, regulating, and supervising Federal Credit Unions. The agency is also responsible for administering the National Credit Union Share Insurance Fund, which insures the share (savings) accounts of the members of all federally chartered credit unions and select State-chartered credit unions. The NCUA board also serves as the board of directors of the National Credit Union Administration Central Liquidity Facility, which is a mixed ownership Government corporation created to provide funds to meet the liquidity needs of credit unions.

Public Participation Summary

NCUA relies upon published requests for written comments on proposed rules. Advance copies of proposed rules are regularly sent to those persons and associations that have expressed an interest in being placed on NCUA's regulatory mailing list. Send requests to the Office of Administration, at the same address as the Information Contact.

Funding and Technical Assistance

No funding or technical assistance is available at this time.

Public Participation Documents

NCUA final report "In Response to Executive Order 12044: Improving Government Regulations," 44 FR 17954, March 23, 1979.

Information Contact

Rogert S. Monheit, Senior Attorney
and Regulatory Development
Coordinator

Office of General Counsel
National Credit Union Administration
1776 G Street, N.W.
Washington, DC 20456
(202) 357-1030

Small Business Administration (SBA)

Units That Issue Regulations

SBA issues all regulations under the signature of the agency Administrator.

Functions

The Agency provides the small business community with financial assistance, management training and counseling, and help in getting a fair share of government contracts through over 100 offices in all parts of the Nation. SBA also serves as small business' chief advocate in the Federal Government, and administers the Government's home, personal property, and business Disaster Loan Recovery Program.

Public Participation Summary

SBA does not favor the Administrative Procedure Act's exemption of regulations concerning grants, loans, and other forms of financial assistance from normal public participation procedures; notices on these matters also go out to the general public for comments. Therefore, the agency has developed 13 CFR 101.9, which specifies that public participation will be encouraged in all SBA rulemaking to the maximum extent possible. In this regard, the Agency makes use of regional hearings on its regulatory proposals and solicits advice on a regular basis from advisory committees. Otherwise, the Agency's procedures are in keeping with the Administrative Procedure Act and the spirit of E.O. 12044.

Funding and Technical Assistance

None.

Public Participation Documents

SBA's regulations dealing with public participation in rulemaking can be found at 13 CFR 101.9. Copies may be obtained by calling or writing the Information Contact listed below.

Information Contact

For general information on the preparation of regulations and policy, the promulgation of rules, or public participation procedures, contact:

George M. Grant, Jr., Associate
General Counsel for Legislation
Small Business Administration
1441 L Street, N.W., Room 700
Washington, DC 20416
(202) 653-6662

United States International Trade Commission (USITC)**Units That Issue Regulations**

The Office of the General Counsel at the Commission is responsible for recommending the adoption of regulations by the Commission, recommending rulemaking proceedings, and preparing notices for rulemaking proceedings.

Functions

The Commission is an independent agency created to provide the Congress and the Executive Branch with expert advice on matters related to U.S. foreign trade. In addition to the general advisory responsibilities, the Commission conducts many investigations related to the impact of imported products on the domestic markets of U.S. producers.

Public Participation Summary

The Office of the Secretary at the Commission is responsible for assisting interested persons with participation in Commission investigations, facilitating access to information gathered by the Commission, and providing general information concerning the Agency. Much of the information developed by the Commission concerns the domestic markets for products. Accordingly, consumers, producers, and importers of the products subject to investigation often have an interest in Commission proceedings and publications.

Funding and Technical Assistance

Although no compensation is made available to the public for participation in a Commission proceeding, assistance is available. Inquiries concerning assistance should be directed to the Office of the Secretary.

Public Participation Documents

"Summary of Statutory Provisions Related to Import Relief" (Publication No. 1057, April 1980) summarizes the statutory provisions for agency investigations of the impact of imports in domestic product markets and is available from the Office of the Secretary.

A brochure that generally describes the agency is also available from the Office of the Secretary.

Information Contact

Hal Sundstrom
Assistant Secretary and Public
Information Officer
Office of the Secretary
U.S. International Trade Commission
701 E Street, N.W.
Washington, DC 20536

(202) 523-0161

This agency has a general public mailing list. Address requests to be added to the mailing list to the Office of the Secretary.

Veterans Administration (VA)**Units That Issue Regulations**

Department of Medicine and Surgery
Department of Memorial Affairs
Department of Veterans Benefits

Other units can on occasion issue internal regulations; that is, for adherence by the agency only.

Functions

The VA provides services to veterans and their dependents through a variety of programs, including compensation, pension, education, vocational rehabilitation, insurance, home loans, burial, and health care and hospitalization.

Public Participation Summary

The VA works closely with community organizations and knowledgeable individuals involved in veterans' interests in reviewing its regulations and procedures to determine program responsiveness to public need. VA medical centers and regional offices provide many services and disseminate information at the local level, where public involvement is particularly visible.

Also, the VA sends copies of proposed regulations to the U.S. House and Senate Veterans Affairs Committees, to veterans' organizations, and other interested parties. The VA encourages the public to submit written comments on the agency's regulatory activities. There are no formal requirements for submitting these comments, and the comment period on all rulemaking proceedings is either 30, 60, or 90 days, depending on the significance of the regulation.

Funding and Technical Assistance

None.

Public Participation Documents

None.

Information Contact

Nancy C. McCoy
Assistant Director for Administrative
Issues
Veterans Administration
Office of Management Services (61)
810 Vermont Avenue, N.W.
Washington, DC 20420
(202) 389-3770 or 2073

Civil Aeronautics Board (CAB)**Units That Issue Regulations**

None. CAB regulations are issued by the CAB itself.

Functions

The CAB is responsible for economic regulation of air transportation and for overseeing the transition to a deregulated air transportation system.

Public Participation Summary

Private and public interest groups that petition CAB for rulemaking must file an original and 19 copies of the petition with CAB's Docket Section.

Respondents to the petition should also file an original and 19 copies. Individuals may file their comments as consumers without filing multiple copies.

Public files on Agency proceedings may be examined at CAB in Room 711, 1825 Connecticut Avenue, N.W., Washington, DC, during normal business hours Monday through Friday.

Funding and Technical Assistance

The CAB's public participation funding program was terminated by P.L. 96-131, 93 Stat. 1023, November 30, 1979. (See 45 FR 36035, April 17, 1980.)

Public Participation Documents

In May and November, the CAB publishes in the *Federal Register* an agenda of significant regulations under development or review.

Information Contact

For information on public participation:

Mark Schwimmer, Assistant Chief
Rules and Legislation Division
Office of the General Counsel
Civil Aeronautics Board
1825 Connecticut Avenue, N.W.
Washington, DC 20428
(202) 673-5442

For consumer complaints:
Consumer Assistance Section
Bureau of Consumer Protection
Civil Aeronautics Board
1825 Connecticut Avenue, N.W.
Washington, DC 20428
(202) 673-6047

Commodity Futures Trading Commission (CFTC)**Units That Issue Regulations**

CFTC regulations are issued by the CFTC itself.

Functions

The CFTC is an independent regulatory agency that exercises

rulemaking and enforcement powers over trading on 10 commodity exchanges offering futures contracts in a wide variety of commodities. The Commission's regulatory and enforcement programs are designed to prevent deliberate market distortions and manipulations, to ensure fair trade processes, to protect the financial integrity of the marketplace and the brokerage community, and to assure the rights of customers, while providing an additional forum for release of their legitimate grievances.

Public Participation Summary

The CFTC also administers a reparations procedure under which it can order a firm or person to pay damages to someone who proves damage by that person or firm caused by a violation of the Commodity Exchange Act, as amended, or of CFTC regulations. This procedure provides an alternative to arbitration or litigation for members of the public who believe they have been damaged by persons or companies registered with or required to be registered with the CFTC, including floor brokers, futures commission merchants, commodity trading advisors, commodity pool operators, and associated persons.

Funding and Technical Assistance

None.

Public Participation Documents

CFTC 101: Reparations.
CFTC 102: Economic Purposes of Futures Trading.
CFTC 103: Farmers, Futures and Grain Prices.

Information Contact

For information concerning public participation or to be included on the Agency's public information mailing list, call or write:

Randell Moore, Director
Office of Public Information
Commodity Futures Trading
Commission
2033 K Street, N.W.
Washington, DC 20581
(202) 254-8630

For publications requests contact:

Irwin B. Johnson
Division of Economics and Education
Commodity Futures Trading
Commission
2033 K Street, N.W.
Washington, DC 20581
(202) 254-5273

CFTC's Consumer Hotline provides information concerning firms or persons dealing in commodity futures or similar instruments, such as options and

leverage. The toll-free phone numbers are:

(800) 424-9838
Alaska, Hawaii: (800) 424-9707
Metro Washington, DC area: (202) 254-7837

Consumer Product Safety Commission (CPSC)

Units That Issue Regulations

The Commission votes on and issues all regulations from the Agency.

Functions

CPSC issues and enforces mandatory product safety standards and bans unsafe products when safety standards are not feasible. It also monitors recalls of defective products, helps industry develop voluntary safety standards, informs and educates consumers about product hazards, conducts research and develops test methods, and collects and publishes injury and hazard data.

Public Participation Summary

CPSC's Office of Public Participation (OPP) develops programs to encourage participation by the public and administers a funding program for selected public participants in certain agency proceedings.

The CPSC "Public Calendar," published weekly, provides information on meetings, hearings, Commission agendas, and proposed and final rules and regulations. Interested persons can use the "Public Calendar" to find out when the Commission is soliciting funding applications for participation in a proceeding. Federal Register notices of proceedings would also provide this information.

Funding and Technical Assistance

CPSC provides reimbursement to selected participants in certain Agency proceedings under the Consumer Product Safety Act.

Public Participation Documents

Information on opportunities for participation by the public in CPSC proceedings and on the Commission's funding program is available from the Office of Public Participation. The "Public Calendar" is available from the Office of the Secretary.

Information Contact

Barbara Rosenfeld, Director
Office of Public Participation
Office of the Secretary
Consumer Product Safety Commission
Washington, DC 20207
(202) 254-6241
or
Office of the Secretary

Same address as above
(202) 634-7700

For general information about the Commission's activities, call toll-free: (800) 638-8326; Maryland residents only call: (800) 492-8363; Alaska, Hawaii, Virgin Islands, and Puerto Rico: (800) 638-8333.

A teletype for the deaf is available from 8:30 a.m. to 5:00 p.m. Monday through Friday for those who call these numbers.

Federal Communications Commission (FCC)

Units That Issue Regulations

The FCC's seven-member Commission issues and approves all Agency regulations.

Functions

The FCC regulates both interstate and U.S. foreign radio, television, wire, cable, and satellite communications.

Public Participation Summary

The FCC publishes a "Sunshine Agenda" prior to each open FCC meeting that provides brief summaries of each item scheduled for discussion.

The FCC's Consumer Assistance Office (CAO) conducts public participation workshops in various locations across the country. These sessions teach members of the public how to participate in FCC rulemaking proceedings.

CAO also publishes "Feedback," a plain English, consumer-oriented summary of major FCC proposals, and "Actions Alert," a weekly bulletin reminding consumers of major pending actions at the FCC.

Funding and Technical Assistance

The FCC is considering the creation of a program to fund public participation. At this time, the FCC does not have such a program.

Public Participation Documents

You can obtain the following documents on public participation as well as other publications about the agency from the FCC's Consumer Assistance Office free of charge:

"A Guide to Open Meetings"
"The Public and Broadcasting: A Procedure Manual"
"How FCC Rules are Made"
"FCC Information Seekers Guide"
"FCC Feedback"
"FCC Actions Alert"

Information Contact

Patti Grace, Chief
Consumer Assistance Office
Federal Communications Commission

1919 M Street, N.W., Room 258
Washington, DC 20554
(202) 632-7000

Call the Consumer Assistance Office for information on receiving its mailing lists for "Feedback" and "Actions Alert."

The CAO operates a special phone for the hearing impaired 8:00 a.m. to 5:30 p.m., Monday through Friday: (202) 632-6669.

For a recorded list of FCC press releases, telephone (202) 632-0002 (the recording is changed twice daily).

Federal Deposit Insurance Corporation (FDIC)

Units That Issue Regulations

FDIC's Board of Directors issues regulations for the agency.

Functions

FDIC administers a Federal insurance program for the deposits in banks belonging to the Federal Reserve System and in State banks and U.S. branches of foreign banks that apply and qualify for FDIC insurance. FDIC also regulates, at the Federal level, FDIC-insured State-chartered banks that are not members of the Federal Reserve System and State-licensed branches of foreign banks.

Public Participation Summary

Under § 553 of the Administrative Procedure Act, FDIC is required to provide general notice of, and permit public participation in, its rulemaking activities, except for interpretative rules; or rules on FDIC organization, practice, or procedure; or when the notice and public participation are impracticable, unnecessary, or contrary to the public interest. Public participation generally occurs through the submission of written data, views, or arguments. However, the FDIC Board of Directors may on occasion authorize interested persons to present their views orally. Under FDIC rulemaking procedures, the public comment period for all published proposed rules is at least 60 days, unless for good cause, such as unnecessary delay or harm to the public interest, the FDIC Board of Directors determines that a shorter period is necessary. When FDIC does not provide public notice of and the opportunity for public participation in its rulemaking activities, or when the agency does not provide a public comment period of at least 60 days, the FDIC Board of Directors will publish its reasons for not doing so in the **Federal Register** notice for the regulation.

Funding and Technical Assistance

Consideration is given on a case-by-case basis. Requests should be directed to the Executive Secretary listed below under "Information Contact."

Public Participation Documents

An FDIC Policy Statement, "Development and Review of FDIC Rules and Regulations," outlines procedures used by FDIC during the development and review of its regulations. Copies can be obtained from the Information Office listed below.

Information Contact

For information on public participation and on funding:
Hoyle L. Robinson, Executive Secretary
Office of the Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429
(202) 389-4425
For publications requests:
Information Office
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429
(202) 389-4221

Federal Election Commission (FEC)

Units That Issue Regulations

All regulations issued by the Federal Election Commission are approved by affirmative vote of at least four Commissioners. The Office of General Counsel (OGC) drafts regulations for Commission approval. The other functional divisions of the Commission, such as Audit, Reports Analysis, and Public Disclosure, may make recommendations on new regulations to OGC. No office of the Commission has authority to issue regulations without such approval.

Regulations promulgated under the Federal Election Campaign Act of 1971, as amended (2 U.S.C. § 431 *et seq.*), and chapters 95 and 96 of the Internal Revenue Code of 1954 (Title 26, United States Code) must be transmitted to Congress prior to final prescription. If neither House of Congress disapproves the proposed regulation within 30 legislative days after transmittal, it may be prescribed by the Commission. (See 2 U.S.C. § 438(a)(8), 26 U.S.C. §§ 9009(c) and 9039(c).)

Functions

The Federal Election Commission administers, formulates policy, and

seeks to obtain compliance with respect to the Federal Election Campaign Act of 1971, as amended, and chapters 95 and 96 of the Internal Revenue Code of 1954. Its functions include administering the Federal campaign finance disclosure requirements, contribution and expenditure limitations prohibitions on certain contributions to Federal Candidates, and public financing of Presidential nominating conventions and elections.

Public Participation Summary

The Federal Election Commission has no statutory authority for special public participation programs. Regulations are issued under the Administrative Procedure Act and public comments are invited pursuant to ANPRMs and NPRMs published in the **Federal Register**. Information on pending regulatory activities is also published in the Commission's monthly newsletter, the "FEC Record."

Funding and Technical Assistance

None.

Public Participation Documents

Information on pending regulatory activities, as well as pending advisory opinions, recent enforcement actions, and litigation, is published in the Commission's monthly newsletter, the FEC "Record." The "Record" is distributed free of charge by the Commission's Public Information Office (see Information Contact below).

Information Contact

Dr. Gary Greenhalgh, Assistant Staff Director for Public Information
Federal Election Commission
1325 K Street, N.W.
Washington, DC 20463
(202) 523-4068
Outside the Washington, DC metro area, phone (800) 424-9530.

Federal Energy Regulatory Commission (FERC)

Units That Issue Regulations

There are no administrative units within the FERC that have the authority to issue regulations. The full Commission votes on and issues all FERC regulations.

Functions

The Federal Energy Regulatory Commission (FERC) is an independent five-member regulatory agency. As the successor to the Federal Power Commission, FERC sets rates and charges for transportation and sales of natural gas, transmission and sale of wholesale electric power, and

transportation of oil by pipeline, and also licenses private, State, and local hydroelectric projects. FERC also reviews certain actions taken by the Department of Energy.

Public Participation Summary

The FERC meets in public session on Wednesday and Thursday of each week, except the first week of the month. The public is invited to attend Commission meetings. Opportunity for public intervention and comment is provided at earlier stages in the decisionmaking process.

FERC often holds public hearings and informal public conferences on major rulemaking proposals in Washington, DC and other regions of the country. These hearings and conferences are usually conducted by a member of the Commission and are announced in the **Federal Register**.

After a proposed rule appears in the **Federal Register**, the public usually has 45 days in which to submit written comments on the proposal. The Commission requires 14 copies of written comments, but in special circumstances the Commission has waived that requirement.

The FERC published a draft plan for a consumer program in the **Federal Register** of June 17, 1980, and a final plan will be published in November 1980. The program will be carried out by the Division of Consumer Affairs within the Office of Congressional, Consumer, and Public Affairs (OCCPA) and the Office of Public Participation. The plan creates mechanisms, including the establishment of two advisory committees, for increased consumer and public participation in Commission proceedings. Copies are available and may be obtained from the contacts listed below.

Funding and Technical Assistance

The Congress established conditions under which certain intervenors could be compensated by the FERC for participation in Commission proceedings in the Public Utility Regulatory Policies Act of 1978. However, in the appropriations process, the Congress has consistently failed to provide funds to compensate intervenors in FERC proceedings, and further wrote an absolute prohibition on the use of FERC FY 1980 and 1981 appropriations to fund public intervention. In addition, the Office of Management and Budget did not approve the FERC FY 1981 budget request for intervenor funding.

Public Participation Documents

A number of publications designed to facilitate public participation in FERC proceedings are now available. These include:

- A Guide to Public Information at the FERC.
- The "FERC Rulemaking Calendar." Published quarterly, it summarizes all rulemakings in progress and gives the name and phone number of the project manager.

- Publications and Staff Report Listings.

Fact sheets are published from time to time explaining the major issues before the Commission.

Other publications are now being drafted:

- A guide to the weekly public Commission meetings.
- A pamphlet tracing rulemakings and the various kinds of cases decided by the Commission through the regulatory process.

The Commission maintains several mailing lists designed to disseminate widely free information on its activities and ongoing proceedings. These mailing services include:

- FERC Weekly Announcements—a weekly compilation of all news releases issued by the FERC.
- Rulemaking Mailing List—all FERC orders in rulemaking proceedings.
- Natural Gas Policy Act (NGPA) Mailing List—all new releases, notices, and orders pertaining to the NGPA.
- Consumer Organization Mailing List—Commission announcements, notices, etc., that are of interest to consumers.
- Incremental Pricing Mailing List—orders and notices pertaining to the incremental pricing program.

Lists of all publications and special reports issued by the FERC can be obtained from the OCCPA Division of Public Information. The Division of Public Information also maintains a daily recorded message listing all orders and notices issued by the Commission. The message is changed at 10:00 a.m. and 3:00 p.m. each day; call (202) 357-8555.

Information Contact

For more information on public participation at the FERC, call or write: Kenneth S. Levine, Director
Office of Congressional, Consumer, and Public Affairs
Federal Energy Regulatory Commission
825 North Capitol Street, N.E., Room 9200
Washington, DC 20426
(202) 357-8370

Walton M. Chalmers, Director
Division of Consumer Affairs
Office of Congressional, Consumer, and Public Affairs
Federal Energy Regulatory Commission
825 North Capitol Street, N.E., Room 9200
Washington, DC 20426
(202) 357-8392

Federal Home Loan Bank Board (FHLBB)

Units That Issue Regulations

Office of General Counsel,
Regulations Division

Functions

The Federal Home Loan Bank Board is an independent regulatory agency headed by a three-member board of directors. Members are appointed by the President, with the advice and consent of the Senate, for 4-year terms. The Chairman is designated by the President and is the chief executive officer of the Board.

The members of the Board comprise the Board of Directors of the Federal Home Loan Mortgage Corporation, which was created by Title III of the Emergency Home Finance Act of 1970 to develop a secondary market for mortgage loans. The Board also supervises the operations of the Federal Home Loan Banks, and directs the operations of the Federal Savings and Loan Insurance Corporation (FSLIC). The FSLIC insures the accounts of all federally chartered savings and loans, and of other building and loan, savings and loan, and homestead associations, and cooperative banks that are eligible for insurance and whose applications have been approved by FSLIC. Finally, the Board supervises and regulates all savings and loan and other similar institutions doing business in Washington, DC.

Public Participation Summary

After notice of a proposed amendment or rule is published in the **Federal Register**, interested persons may participate in the regulatory process by sending written data, views, or arguments to the Secretary of the Board. Members of the public may also petition the Board to issue, amend, or repeal any amendment or rule by sending a petition to the Secretary of the Board.

The Board generally does not hold hearings on proposed regulations or amendments. However, if hearings are held, they are open to the public. Similarly, the public may attend open Board meetings. Notice of these meetings is published in the **Federal**

Register and posted in the lobby of the Board's headquarters at 1700 G Street, N.W., Washington, DC.

Funding and Technical Assistance

None.

Public Participation Documents

Information on public participation in Board meetings, hearings, and other parts of the regulatory process, summarized above under the heading "Public Participation Summary," may be found in 12 CFR §§ 505b and 508. Further information on procedures, forms, and other aspects of the Board's operations is available to the public at the Board's headquarters and at the offices of the Federal Home Loan Banks.

Information Contact

Warren J. Dunn
Communications Office
Federal Home Loan Bank Board
1700 G Street, N.W.
Washington, DC 20552
(202) 377-6677

Interested persons may write or phone the above office to be placed on a general public information mailing list to receive press and statistical releases. Other information published by the Board and available to the public, listed in 12 CFR 505.3, includes copies of the Board's Annual Reports, and the *Federal Home Loan Bank Board Journal*, as well as statutory and regulatory material relating to the Board's operations.

Federal Maritime Commission (FMC)

Units That Issue Regulations

There are no units within the Federal Maritime Commission that have authority to issue regulations. All regulations are issued by the Commission as a whole.

Functions

FMC is an independent regulatory agency primarily responsible for administering Federal statutes concerned with the regulation of ocean shipping in the U.S. foreign commerce and the U.S. domestic offshore commerce.

Public Participation Summary

Shippers and receivers of cargo in the U.S. ocean commerce are the FMC's real consumers. Because the general public is not usually directly concerned with ocean freight rates and practices, the Commission's public participation activities are somewhat limited. While interested parties may and do participate in the rulemaking proceedings, comments from the general public are rarely received. However, in

addition to requesting written comments from the shipping public on proposed rules, the Commission, at times, conducts informal public discussions in various cities throughout the country to solicit comments on issues to be addressed in proposed rules. Comments obtained through such public discussions become part of the rulemaking record. FMC has a public reference room and a dockets room in Washington, DC, where the public can review files on agreements, tariffs, and legal proceedings. The eight Commission field offices also have public reference areas. Call one of the persons listed under "Information Contact" for the field office nearest you if it is not listed in your telephone directory.

Funding and Technical Assistance

None.

Public Participation Documents

None.

Information Contact

Francis C. Hurney, Secretary
Federal Maritime Commission
1100 L Street, N.W., Room 11101
Washington, DC 20573
(202) 523-5725

or

Otto J. Kirse, Assistant Managing
Director for Consumer Affairs
Federal Maritime Commission
1100 L Street, N.W., Room 12411
Washington, DC 20573
(202) 523-5800

Federal Mine Safety and Health Review Commission (FMSHRC)

Units That Issue Regulations

With the exception of certain administrative matters, the agency does not engage in the formal promulgation of regulations; the primary function of FMSHRC is to adjudicate.

Functions

Congress created FMSHRC as an independent agency to adjudicate disputes under the Mine Safety and Health Act of 1977.

Public Participation Summary

Section 105(c) of the Act (30 U.S.C. § 815(c)) contains a Congressional mandate for legal representation by the Federal Government for miners and their representatives in private disputes brought before FMSHRC against mine operators because of alleged discrimination in safety and health matters. Congress also provided that when the Solicitor of the Department of Labor does not provide legal representation, a miner or

representative who wins the dispute can recoup costs, including attorney fees, from the mine operator.

Funding and Technical Assistance

The provision by Congress for a miner or his representative to receive legal representation by the Federal Government or to recoup costs can be found at Title 30, § 815(c) of the United States Code.

There is no additional provision or procedure for funding of public participation at this time.

Public Participation Documents

The Rules of Procedure for cases tried before FMSHRC are available from FMSHRC or can be found in Title 29, Part 2700 of the Code of Federal Regulations.

FMSHRC also is considering the publication of a pamphlet explaining how the Commission operates.

Information Contact

Executive Director
Federal Mine Safety and Health
Review Commission
1730 K Street, N.W., Sixth Floor
Washington, DC 20006
(202) 653-5625

Federal Reserve System (FRS)

Units That Issue Regulations

Board of Governors of the Federal Reserve System.

Functions

The primary responsibility of the Federal Reserve System is the conduct of monetary policy which affects the availability of money and credit. It exercises supervisory and regulatory authority over member banks and all bank holding companies. It also acts as the fiscal agent for the U.S. Treasury and has responsibility for implementing numerous consumer laws, such as Truth in Lending.

Public Participation Summary

Depending upon the nature of the proposed regulation and the interests of the affected sector, the Federal Reserve Board (FRB) uses a variety of outreach procedures, including publishing an ANPRM that may suggest specific issues on which comments should be focused. FRS may also choose to schedule an informal public hearing or directly solicit views from interested persons or groups.

The Board's Regulations B and Z, which implement the Equal Credit Opportunity and Truth in Lending Acts, provide for special public participation in matters related to the Acts. If the FRB

receives a request for public comment on an official staff interpretation of these regulations before the effective date is suspended, the FRB will republish the proposed staff interpretation for public comment. Public participation is also invited through the Board's Consumer Advisory Council. The Council generally meets for 1½ days four times a year and about ten new members each year are chosen from the public. The Council publishes its agenda preceding each meeting. We encourage written public comments on proposed topics and public attendance at meetings.

Funding and Technical Assistance

None.

Public Participation Documents

The Federal Reserve has prepared a special pamphlet entitled "Government in the Sunshine" that provides a guide to meetings of the Board of Governors. More formal information on Rules of Procedure, 12 CFR 262 and Rules Regarding Public observation of Meetings, 12 CFR 261B is available through the Publications Office of the Board.

In the Consumer area, information on the Consumer Advisory Council can be found in Rules of Organization and procedure of the Consumer Advisory Council, 12 CFR 267.

Procedures for Issuing Official Staff Interpretations of Regulations B and Z, 12 CFR 202.1(d), 226.1(d) is available through the Publications Office.

Information Contact

Joseph R. Coyne, Assistant to the Board
Federal Reserve Board
Washington, DC 20551
(202) 452-3204

To include your name on the agency's general public information mailing list or to obtain copies of the public participation documents listed above call or write:

Publications
Federal Reserve Board
Washington, DC 20551
(202) 452-3244

Federal Trade Commission (FTC)

Units That Issue Regulations

Bureau of Competition
Bureau of Consumer Protection

Functions

The Commission's functions are aimed at promoting competition and fair and honest dealing in the economy. It seeks to remove market restrictions that

drive up prices and limit the supply of goods and services. It also seeks to protect consumers by ensuring that commercial information available to consumers is accurate and complete.

Public Participation Summary

Section 18(h) of the FTC Act (as amended) authorizes the Commission to reimburse persons who participate in its rulemaking proceedings for the costs of that participation if they could not otherwise afford to participate effectively, and if their participation is necessary in the proceeding. The program is administered in the Office of the General Counsel by the Special Assistant for Public Participation, with all funding determinations made by the General Counsel.

To date, nearly 70 groups and individuals representing citizens' and small business interests have been reimbursed for their costs of participating in FTC rulemaking proceedings. The program is intended to improve the rulemaking process by ensuring that all points of view are heard through effective presentations.

An important part of the public participation in the rulemaking program is an affirmative outreach effort. This includes two special features: first, workshops to explain the rulemaking procedures and how to participate effectively; second, seminars to small business and consumer interests that are likely to be concerned with particular rulemakings to inform them of the availability of public participation funding.

The Commission encourages participation from small businesses whose views might not otherwise be adequately represented in rulemaking proceedings. To accomplish this, it sets aside 25 percent of its participation funds for such groups. This reserved amount is available to reimburse only those small businesses (and their trade associations) who meet the conditions for the program and would be regulated by the proposed rule involved.

Funding and Technical Assistance

Interested persons, whether they represent a consumer or a small business point of view, can be reimbursed for their costs of participation in rulemaking proceedings if they meet the statutory criteria. The Special Assistant for Public Participation, listed under "Information Contact," provides assistance in the preparation of reimbursement applications and answers questions regarding the status of rulemaking proceedings. The Commission is unable

to provide other assistance to participants.

Public Participation Documents

Staff Guidelines: "The Public Participation in Rulemaking Program: Rulemaking Proceedings and Reimbursement for Costs of Participation."

These Guidelines are intended to assist persons unfamiliar with FTC activities who are seeking reimbursement for their costs of participation in FTC rulemakings. Information is provided on the nature of FTC rulemaking proceedings, types of public participation possible at each stage of these proceedings, and the statutory standards for reimbursement. The Guidelines also explain the financial requirements for reimbursement recipients and include application forms with step-by-step instructions.

Information Contact

For information on general public participation and funding, please call or write:

Bonnie Naradzy, Special Assistant
for Public Participation
Office of the General Counsel
Federal Trade Commission
Washington, DC 20580
(202) 357-0258

Interstate Commerce Commission (ICC)

Units That Issue Regulations

The Commission issues all regulations. Staff units responsible for preparing regulations for the Commission's approval are:

Bureau of Accounts
Bureau of Traffic
Office of Consumer Protection
Office of Policy and Analysis
Office of Proceedings

Functions

The ICC was created in 1887. It regulates railroads, trucking companies, bus lines, freight forwarders, and water carriers. The Commission is entrusted with ensuring the "development, coordination and preservation of a transportation system that meets the transportation needs of the United States." In regulating the modes of transportation subject to its jurisdiction, the Commission must carry out a transportation policy which has as its goals: (1) to recognize and preserve the inherent advantage of each mode of transportation; (2) to promote safe, adequate, economical, and efficient transportation; (3) to encourage sound

economic conditions in transportation, including sound economic conditions among carriers; (4) to encourage the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair or destructive competitive practices; (5) to cooperate with each State and the officials of each State on transportation matters; (6) to encourage fair wages and working conditions in the transportation industry; and (7) with respect to transportation of property by motor carrier, to promote competitive and efficient transportation services in order to (a) meet the needs of shippers, receivers, and consumers; (b) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping public; (c) allow the most productive use of equipment and energy resources; (d) enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions; (e) provide and maintain service to small communities and small shippers; (f) improve and maintain a sound, safe, and competitive privately owned motor carrier system; (g) promote greater participation by minorities in the motor carrier system; and (h) promote intermodal transportation.

Public Participation Summary

The Commission's Office of Special Counsel assists the Commission in determining the public interest in its proceedings. The Special Counsel contributes to the public interest record in Commission proceedings by intervening as a party and by conducting outreach activities to encourage and facilitate direct public participation. The Special Counsel uses complaints and suggestions from the public to formulate a position reflecting the public interest in a proceeding. The Commission sometimes holds informal hearings in cities across the Nation to solicit public comment either before opening a rulemaking proceeding or before taking final action in a rulemaking proceeding. Staff of the Special Counsel are available to assist the public in participating in these hearings.

Staff of the Small Business Assistance Office are also available to help small business interests present their viewpoints in Commission proceedings.

Funding and Technical Assistance

No funding is available, but, as discussed above, the Office of Special Counsel and the Small Business Assistance Office offer technical assistance in some Commission

proceedings. In addition, the Commission maintains field offices in every State with staff available to assist the public.

Public Participation Documents

"Informal Rulemaking Procedures," NPRM, 43 FR 27732, June 26, 1978; Notice of Final Rules, 44 FR 42558, July 19, 1979. "Improving Commission Regulations," Notice of Proposed Policy Statement, 43 FR 27729, June 26, 1978; Notice of Final Policy Statement, 44 FR 42563, July 19, 1979.

Information Contact

For information on public interest issues in agency proceedings call or write:

Edward J. Schack, Special Counsel
Office of Special Counsel
Interstate Commerce Commission
12th St. and Constitution Ave., N.W.
Washington, DC 20423
(202) 275-7411

or

Bernard Gaillard, Director
Small Business Assistance Office
Interstate Commerce Commission
12th St. and Constitution Ave., N.W.
Washington, DC 20423
(202) 275-7597

To include your name on the agency's general public information list, call or write:

Interstate Commerce Commission
Office of Communications
12th St. and Constitution Ave., N.W.
Washington, DC 20423
(202) 275-7252

The Commission operates a toll-free consumer hotline: (800) 424-9312. Consumers may use the hotline if they have complaints about any carrier subject to the Commission's jurisdiction. The hotline is manned from 8:30 a.m. to 5:00 p.m. weekdays and is answered by a recording at other times. Callers can leave their name and number on the recording device, and a staff member will return their call.

To reach the Commission's Spanish-speaking coordinator, call (202) 275-7574.

National Labor Relations Board (NLRB)

Units That Issue Regulations

The Board functions in a quasijudicial manner in processing unfair labor practice charges and representation cases. Although serving as precedent and, in this sense, as guidelines to the labor-management community as a whole, the Board's decisions and orders, strictly speaking, are applicable only to the parties involved. Accordingly,

because the NLRB does not normally use rulemaking procedures for the purpose of issuing rules and regulations, the NLRB has no regulatory units.

Functions

The NLRB has two basic functions. They are (1) to determine, through secret ballot elections, the free choice of employees whether or not they wish to be represented by a union for collective bargaining purposes; and (2) to prevent and remedy unfair labor practices by either employers or unions which adversely affect employees' rights to self-organization and collective bargaining.

Public Participation Summary

Although opportunities for public participation in NLRB decisions are normally limited, the Board has taken certain steps that it hopes will facilitate, to the extent possible, participation by the public in agency procedures:

(1) Public Information Program: Effective July 27, 1979, the Board's 33 Regional Offices inaugurated a new public information program designed to enhance the public's understanding of the scope and function of the National Labor Relations Act and the NLRB's role in administering it. The new program resulted from a study that indicated that improved planning and scheduling of information officer assignments, expanded training in the performance of such duties, and the assignment of more experienced Board agents to this function would enable members of the public with grievances which come under Board jurisdiction to receive the agency's assistance sooner than in the past, at the same time that those with grievances not covered by the Act would be directed to the appropriate government agency, if any, for resolution of their complaints. The Agency has launched a training program for information officers that, coupled with public information brochures and a change in the case assignment process, will give priority to the information officer program.

(2) Decentralization of the Administrative Law Judges' Division: In an attempt to expedite the processing of unfair labor practice charges, the Board has recently decentralized the Administrative Law Judges' Division (previously headquartered in Washington and San Francisco) by opening additional offices in New York City and Atlanta, Georgia.

Funding and Technical Assistance

The NLRB does not offer funding or technical assistance.

Public Participation Documents

"A Guide to Basic Law and Procedures Under the National Labor Relations Act." As a result of experience indicating that there is still a lack of basic information about the National Labor Relations Act, the NLRB has sought to meet this demand by setting forth in this pamphlet the basic law under the Act in a nontechnical way, so that those who may be affected by it, including the general public, can better understand what their rights and obligations are.

This guide is available through the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, at a charge of \$2.20.

Information Contact

Thomas W. Miller, Jr., Director
Division of Information
National Labor Relations Board
1717 Pennsylvania Avenue, N.W.,
Room 710
Washington, DC 20570
(202) 632-4950

The Division of Information also maintains several mailing lists that include the following: 1. Weekly Summary of NLRB Cases; 2. Monthly Election Reports; 3. News Releases. Write the above "Information Contact" if you wish to be placed on any of these lists.

Nuclear Regulatory Commission (NRC)

Units That Issue Regulations

Except as delegated to the Executive Director for Operations, the authority to issue regulations rests with the Commission.

Under 10 CFR 1.40(d), the Executive Director for Operations has been delegated authority to issue amendments to the Commission's regulations which are corrective, minor, or nonpolicy in nature, and do not substantially modify existing regulations. The Executive Director for Operations also may issue amendments to regulations in final form, if no significant adverse comments or questions have been received on the proposed rule change.

Under 10 CFR 1.40(o), the Executive Director for Operations has been delegated authority to deny petitions for rulemaking of a minor or nonpolicy nature, where the grounds for denial do not substantially modify an existing precedent.

Under 10 CFR 2.802(f), the Executive Director for Operations also has been delegated authority to return to a petitioner any proposed petition which

is incomplete and does not meet the requirements of 10 CFR 2.802(c) dealing with the specificity of petitions for rulemaking.

Functions

The NRC was established by the Energy Reorganization Act of 1974, as amended, P.L. 93-438, 88 Stat. 1233 (42 U.S.C. §§ 5801 *et seq.*). This Act abolished the Atomic Energy Commission and, by § 201, transferred to the Nuclear Regulatory Commission all the licensing and related regulatory functions assigned to the Atomic Energy Commission by the Atomic Energy Act of 1954, as amended, P.L. 83-703, 68 Stat. 919 (42 U.S.C. §§ 2011 *et seq.*).

The NRC regulates civilian nuclear activities to protect the public health and safety, national security, and the quality of the environment, as well as to ensure that the public and private sectors obey the antitrust laws.

Public Participation Summary

NRC has taken steps to enhance both the accessibility and quality of public participation in its rulemaking activities. These steps include:

- making available to the public, at the start of each Commission meeting, any staff papers discussed in open meetings, and placing copies of such papers in the Public Document Room;
- publishing an agenda of petitions for rulemaking and proposed rules and noticing the availability of the agenda in the Federal Register;
- publishing quarterly a status summary report called the "Green Book" that lists, among other things, regulations under development by the Office of Standards Development;
- publishing ANPRMs on major actions;
- making available to the public, at the time the Commission considers a final rule, an analysis of comments on the proposed rule and a discussion of their resolution;
- preparing and making available to the public a cost/benefit analysis or environmental impact statement on major rules; and
- holding public hearings or meetings on rulemaking actions of particular interest and importance.

Funding and Technical Assistance

In NRC's budget request to Congress for FY 1981, NRC has included funds for public participation in its rulemaking process. The NRC also encourages prospective petitioners to meet with the staff prior to filing a petition for rulemaking. Those meetings can help expedite the rulemaking process, result in greater understanding of NRC's

licensing requirements, or present alternatives to a petitioner for obtaining the petitioner's objectives.

Public Participation Documents

The "NRC Manual" and other elements of the NRC's Management Directives System contain NRC's organization, policies, procedures, assignments of responsibility, and delegations of authority. Copies of the Manual are available for public inspection and copying at the NRC Public Document Room and at each of NRC's Regional Offices.

The NRC's Annual Report, for sale by the Superintendent of Documents, Government Printing Office, includes a section which discusses provisions in NRC regulations for formal participation by the public in rulemaking, licensing, and other proceedings.

The "Rules of Practice for Domestic Licensing Proceedings," 10 CFR Part 2, pertains to the conduct of Commission proceedings, including the opportunities for public participation.

NRC's procedures for public participation in Agency rulemaking are set forth in Subpart H, Rule Making, of NRC's Rules of Practice (10 CFR Part 2).

Information Contact

For information concerning the status of proposed rules or petitions for rulemaking, to set up meetings with the NRC staff regarding proposed petitions, or for other information concerning NRC's rulemaking activities, call or write:

John D. Philips, Chief
Rules and Procedures Branch
Division of Rules and Records
U.S. Nuclear Regulatory Commission
Room 1713 MNBB
Washington, DC 20555
(301) 492-7086
Address rulemaking petitions to:
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555
Attn: Chief, Docketing & Service
Section

Copies of all petitions are available for public review at:

NRC Public Document Room
1717 H Street, NW
Washington, DC 20555

Information concerning the Agency's public information mailing list can be obtained from:

Steve Scott, Chief
Documents Management Branch
Division of Technical Information and
Document Control
U.S. Nuclear Regulatory Commission
Washington, DC 20555
(301) 492-8585

On a trial basis, the NRC has established an automatic telephone answering service for current information concerning the scheduling of Commission meetings. The telephone number is (202) 634-1498. Further details on Commission meetings are available from the staff of the Office of the Secretary by telephoning (202) 634-1410 on weekdays between 8:15 a.m. and 5:00 p.m.

Occupational Safety and Health Review Commission (OSHRC)

Units That Issue Regulations

The Review Commission does not issue regulations but does issue rules of procedure that govern its administrative proceedings.

Functions

The Review Commission is an independent quasi-judicial agency created by Congress to adjudicate contested enforcement actions arising under the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651-678.

Public Participation Summary

No program.

Funding and Technical Assistance

None.

Public Participation Documents

"A Guide to Procedures of the Occupational Safety and Health Review Commission" (also available in Spanish) is a nontechnical explanation of procedures before the Commission.

"OSHRC: The Federal Job Safety and Health Court."

"Simplified Proceedings—An Experimental, Alternative Procedure to Resolve Simple Cases Before the Occupational Safety and Health Review Commission" is a brief explanation of the new simplified procedures.

These are available free from the Office of Information at the address below.

Information Contact

Public Information Officer
Occupational Safety and Health
Review Commission
1825 K Street, N.W., Room 701
Washington, DC 20006
(202) 634-7948

Postal Rate Commission (PRC)

Units That Issue Regulations

The Commission as a whole issues all decisions, which are forwarded, in accordance with 39 U.S.C. § 3624, to the Governors of the Postal Service for final action. The Governors, under varying

requirements, may approve, allow under protest, reject, or modify a Commission decision.

According to 39 U.S.C. § 3603, the Commission may change its rules of procedure without approval of the Governors of the Postal Service. The procedure for any changes must be in accordance with 5 U.S.C. chapters 5 and 7.

Functions

The Postal Rate Commission is an independent Federal regulatory agency composed of five Commissioners appointed by the President, with the advice and consent of the Senate. The Commission, acting upon requests from the U.S. Postal Service or on its own initiative, recommends to the Governors of the Postal service changes in postal rates, mail classification, and services offered. The Commission also has appellate authority to review Postal Service determinations, and to close or consolidate post offices.

Public Participation Summary

PRC's "Rules of Practice and Procedure" govern all proceedings before the Commission. They are complementary to the Administrative Procedure Act.

PRC's Officer of the Commission (OOC) represents the interests of the general public in Commission proceedings. Persons interested in issues of mail classification and postal rates may contact the OOC at 2000 L Street, N.W., Suite 500, Washington, DC 20268, (202) 254-3840, to present their views. However, the agency's *ex parte* rule forbids the OOC and the staff assigned to that office from having any discussion with the Commission or its advisory staff on the issues in the proceedings. This assures no prejudgment exists when the Commission is deciding a case. The OOC is listed below under "Information Contact."

In addition to providing for participation by persons wishing to become parties or limited intervenors in Commission proceedings, the Commission's rules permit any person to file an informal statement of views with the Commission. These statements are open to public inspection (39 CFR § 3001.19b).

Funding and Technical Assistance

None.

Public Participation Documents

PRC's "Rules of Practice and Procedure" govern all proceedings before the Commission in addition to the laws contained in the Administrative

Procedure Act. These rules can be found at 39 CFR §§ 3001.1-3001.116.

Information Contact

Any person interested in participating in any Commission proceeding may contact:

David Harris, Secretary and Chief
Administrative Officer
Postal Rate Commission
2000 L Street, N.W., Room 500
Washington, DC 20268
(202) 254-3880

General public interest issues can be discussed with:

Stephen Sharfman, Officer of the
Commission
Postal Rate Commission
2000 L Street, N.W., Room 500
Washington, DC 20268
(202) 254-3840

Documents filed in the various cases are available from:

PRC Docket Room
2000 L Street, N.W., Room 500
Washington, DC 20268
(202) 254-3800

The Commission issues a free biweekly "Docket Summary" which lists and describes the significant documents that have been filed with or issued by the Commission. To be put on the mailing list, contact:

Dennis Watson, Public Information
Officer
Postal Rate Commission
2000 L Street, N.W., Room 500
Washington, DC 20268
(202) 254-5614

Securities and Exchange Commission (SEC)

Units That Issue Regulations

All regulations are issued by the Commission as a whole. However, proposed regulations may be suggested to the Commission by any staff division or autonomous office. The principal staff units with direct responsibility for proposing regulations are:

Division of Corporate Regulation
Division of Corporation Finance
Division of Investment Management
Division of Market Regulation
Office of Chief Accountant

Functions

The Commission is responsible for overseeing the operations of the Nation's securities trading markets. It has direct responsibility for regulation of those engaged in trading securities or selling them to the public, such as stockbrokers, persons who trade securities on the floors of exchanges, investment advisers, mutual fund

operators, and others. The Commission also administers the "full disclosure system" which assures that publicly owned companies disclose publicly all material information regarding their operations. In addition, the Commission has responsibilities relating to public utility holding companies and to bankruptcies of public corporations.

Public Participation Summary

The Commission's rulemaking process is open to public participation in accordance with the Administrative Procedure Act and, in addition, certain specific provisions of the Federal securities laws. Notable provisions are at 5 U.S.C. § 553 and 15 U.S.C. § 78s. In general, the Commission publishes NPRMs in the *Federal Register*, the "SEC Docket" and the "SEC News Digest," and provides interested persons an opportunity to submit written data, views, and arguments regarding the proposed rules. Further, the Commission, in certain instances, mails copies of proposed rules directly to interested persons in order to encourage public participation in the comment process. Comments are kept in a public file that is available for reference at the Commission's public reference room at 1100 L Street, N.W., Washington, DC 20549.

Funding and Technical Assistance

None.

Public Participation Documents

A brochure entitled "SEC Publications" lists other material published by the Commission and is available from the Publications Section listed below.

Notice of rule proposals, as well as rule adoptions, schedules of open Commission meetings, and many other announcements of interest to the public, are published each day in the "SEC News Digest," which is also available by subscription from the Superintendent of Documents, at a cost of \$100 per year.

In addition to publication in the *Federal Register*, all rule proposals issued by the Commission are published in the "SEC Docket," which is available by subscription at a cost of \$79 per year from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Information Contact

Copies of specific rule proposals or corporate disclosure documents may be obtained by writing to:

Public Reference Section
Securities and Exchange Commission
500 North Capitol Street, N.W.
Washington, DC 20549

General inquiries or questions about the availability of above-listed documents may be addressed to:

Office of Public Affairs
Securities and Exchange Commission
500 North Capitol Street, N.W.
Washington, DC 20549
(202) 272-2650

Comments on rule proposals should be directed to:

George Fitzsimmons
Secretary to the Commission
Securities and Exchange Commission
500 North Capitol Street, N.W.
Washington, DC 20549

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APPENDIX II: STATUS OF REGULATIONS FROM MAY 1980 EDITION

This appendix provides information about those regulations that appeared as entries in the May 1980 edition of the Calendar of Federal Regulations but are not repeated in this November 1980 edition.

Many entries from the last edition repeat in this edition because the agencies are still developing those regulations. However, some entries do not repeat; for example, a regulation which an agency was developing in May may have been issued as a final rule, or the agency may have withdrawn it or taken some other action that makes it inappropriate to include in this edition of the Calendar. This appendix notes the actions the agencies have taken on such regulations. In addition, it notes any significant word changes in the titles of the regulations to help the reader locate entries that have been retitled and appear as entries in both editions of the Calendar.

The appendix also includes the page number on which the entry appeared in the May 1980 Federal Register edition of the Calendar. (45 FR 36884 *et seq.* May 30, 1980.)

The appendix lists 41 regulations that appeared in the May 1980 edition of the Calendar but that do not repeat in this edition. Agencies took final action on 31 (or 80%) of those 41 regulations (final action includes final rule, or in the case of independent agencies, such actions as a Commission Decision). In four of the 41 cases, the agency does not anticipate any further action on the proposals, and in one case, the agency anticipates no further action in the coming year. Three were withdrawn from the Calendar because the agency no longer felt they were appropriate for inclusion, based on the agency's evaluation of the rule's potential effects, two are on hold pending other actions, such as pending legislation. In two cases, multiple rulemaking actions are involved, parts of which may have been issued as final rules while other parts reappear in the revised entry in this Calendar. The Appendix also lists nine regulations with title changes from the last edition.

The Appendix is organized alphabetically by agency, unit within the agency, and then by title of the regulation.

AGENCY	TITLE OF REGULATION	FR 5/30/80 PAGE NO.	ACTIVITY SINCE LAST EDITION
USDA-AMS	Proposed Federal Milk Order for the Southwestern Idaho-Eastern Oregon Marketing Area	37034	Revised Recommended Decision Issued -- 45 FR 71198, 10/27/80.
USDA-FSQS	Proposed Polychlorinated Biphenyls (PCBs) Regulation	36938	Separated into two regulations: a) Proposed Polychlorinated Biphenyls (PCBs) Regulation - Existing Equipment, in this edition. b) Proposed Polychlorinated Biphenyls (PCBs) Regulation - New or Replacement Equipment, Final Rule -- 45 FR 68914, 10/17/80.

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AGENCY	TITLE OF REGULATION	FR 5/30/80 PAGE NO.	ACTIVITY SINCE LAST EDITION
USDA-FSOS	Voluntary Meat and Poultry Quality Control Systems	36940	Final Rule -- 45 FR 54307, 8/15/80.
DOC-NOAA	Regulations Implementing a Fishery Management Plan for the Butterfish Fishery of the Northwest Atlantic Ocean	36885	Final Rule -- 45 FR 71357, 10/28/80.
DOC-NOAA -OCZM	Channel Islands Marine Sanctuary Regulations	36892	Final Environmental Impact Statement issued 6/6/80. Presidential approval 9/21/80. Publication of Final Rule 10/2/80. 45 FR 95198. Effective date of regulation must await Congressional approval as well as review by the Governor of California.
DOE-ERA	Amendments to the Crude Oil Supplier/Purchaser Rule	36895	Final Rule -- 45 FR 56732, 8/25/80.
DOE-ERA	Amendments to the Emergency Provisions of the Crude Oil Buy/Sell Program	36860	NPRM -- 44 FR 26113, 5/4/79; these proposals are no longer under consideration.
DOE-ERA	Decontrol of Propane/Simplified Propane Price Rule	36862	NOI published 44 FR 7934, 2/7/79; a decision has been made not to proceed with an NPRM.
DOE-ERA	Decontrol of Synthetic Natural Gas Feedstocks	36864	Final Rule -- 45 FR 74672, 11/10/80.

APPENDIX II: STATUS OF REGULATIONS FROM MAY 1980 EDITION

AGENCY	TITLE OF REGULATION	FR 5/30/80 PAGE NO.	ACTIVITY SINCE LAST EDITION
DOE-ERA	Entitlement Adjustments to Alaskan North Slope (ANS) Upper Tier Crude Oil	36864	Final Rule -- 45 FR 46752, 6/10/80.
DOE-ERA	Incentives to Refine Lower Quality Crude Oil	36867	Notice issued 45 FR 63866, 9/26/80 announcing decision to postpone formulation of a rule.
DOE-ERA	Powerplant and Industrial Fuel Use Act of 1978; Implementing Regulations	36871	Final Rule -- 45 FR 38276, 6/6/80.
DOE-ERA	Proposed Amendments to the Equal Application Rule	36873	Final Rule -- 45 FR 28302, 4/29/80.
DOE-RA	Profit Share Bidding System Regulations for Federal Outer Continental Shelf (OCS) Oil and Gas Leases	36875	Final Rule -- 45 FR 36784, 5/30/80.
HEW-FDA	Prescription Drug Products; Patient Labeling Requirements	36947	Final Rule -- 45 FR 60754, 9/12/80.
HUD-NVACP	Lead-Based Paint Poison Prevention Act Regulations	36925	Title change for this edition -- Lead-Based Paint - Chewable Surfaces.
DOI-BLM	Surface Management of Mining Claims Located on the Public Lands	36894	Final Rule -- Mid-November 1980. Exact citation not available at the time of this publication.
DOI-HCRS	Rules and Regulations Pertaining to the Urban Park and Recreation Recovery Program	36897	Final Rule -- 45 FR 47018, 8/9/80.

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AGENCY	TITLE OF REGULATION	FR 5/30/80 PAGE NO.	ACTIVITY SINCE LAST EDITION
DOI-OSM	Surface Coal Mining and Reclamation Operations Permanent Regulatory Program: Performance Bonding	36903	Final Rule -- 45 FR 52306, 8/6/80.
DOJ-CRD	Regulations Prohibiting Discrimination Solely on the Basis of Handicap in Federally Assisted Programs	37014	Final Rule -- 45 FR 37620, 6/3/80.
DOJ-OJARS /LEAA	Procedures Relating to the Implementation of the National Environmental Policy Act	36905	Republished in proposed form 45 FR 45311, 7/3/80. Reclassified by the Office of Legal Counsel as "not significant."
DOL-ETA	Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance	37021	Final Rule -- 45 FR 66706, 10/7/80.
DOL-LMSA -PWBP	Individual Benefit Reporting and Recordkeeping	37024	Separated into two entries for this edition -- Individual Benefit Reporting and Recordkeeping for Multiple Employer Plans; Individual Benefit Reporting and Recordkeeping for Single Employer Plans.
DOL-OSHA	Chemical Substance Identification (Labeling)	36958	Title change for this edition -- Identification and Labeling of Hazardous Materials in the Workplace.

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AGENCY	TITLE OF REGULATION	FR 5/30/80 PAGE NO.	ACTIVITY SINCE LAST EDITION
DOL-OSHA	Safety and Health Regulations for Construction Underground Operations-Tunnels, Shafts and Related Work Areas	36967	Preliminary analysis indicates this rule does not meet criteria for major regulation.
DOL-OSHA	Safety and Health Regulations for Entry and Work in Confined Spaces in Construction	36968	Preliminary analysis indicates this rule does not meet criteria for major regulation.
DOL-OSHA	Standard for Occupational Exposure to Cadmium	36974	No significant action on this proposal expected during the next 12-month period.
DOT-FHWA	Certification of Vehicle Size and Weight Enforcement	37061	Final Rule -- 45 FR 52365, 8/7/80.
DOT-FHWA	Withdrawal of Interstate Segments and Substitution of Alternative Transportation Projects	37063	Final Rule -- 45 FR 69390, 10/20/80.
TREAS-ATF	Advertising Regulations under the Federal Alcohol Administration Act	37038	Title change for this edition -- Labeling and Advertising Regulations under the Federal Alcohol Administration Act.
TREAS-ATF	Unlawful Trade Practices under the Federal Alcohol Administration Act	37041	Final Rule -- 45 FR 63242, 9/23/80.
TREAS-CUSTOMS	Imports of Petroleum and Petroleum Products	37045	Final Rule -- 45 FR 36376, 5/30/80.
EPA-OANR	Visibility Protection Requirements	36914	Final Rule -- Late November 1980.

APPENDIX II: STATUS OF REGULATIONS FROM MAY 1980 EDITION

AGENCY	TITLE OF REGULATION	FR 5/30/80 PAGE NO.	ACTIVITY SINCE LAST EDITION
EPA-OANR -OMSAPC	Gaseous Emission Regulations for 1983 and Later Model Year Light-Duty Trucks and Heavy-Duty Engines	36917	Final Rule -- 45 FR 63734, 9/25/80.
EPA-OPTS	Test Rule for Chemical Substances and Mixtures--Chloromethane and Chlorinated Benzene	36998	Title change for this edition -- Chloromethane and Chlorinated Benzene Proposed Test Rule; Amendment to Proposed Health Effects Standards.
EPA-OWWM	Hazardous Waste Regulations: Core Regulations to Control Hazardous Solid Waste from Generation to Final Disposal	37001	Title change for this edition -- Hazardous Waste Regulations: Phase I and II Regulations to Control Hazardous Solid Waste from Generation to Final Disposal.
EEOC-OPI	Guidelines on Discrimination Because of Religion	37025	Final Guidelines -- 45 FR 72610, 10/31/80.
EEOC-OPI	Interim Amendment to Guidelines on Discrimination Because of Sex	37026	Final Rule -- 45 FR 74676, 11/10/80.
NCUA	Deregulation of Loan Interest Rate Classification	36928	Final Rule -- 45 FR 57365, 8/28/80 (issued); 8/21/80 (effective).
VA-OHG	Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance	37031	Final Rule -- 45 FR 63264, 9/24/80.
CAB	Air Carrier Fitness	37064	Final Rule -- 45 FR 42593, 6/25/80.

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AGENCY	TITLE OF REGULATION	FR 5/30/80 PAGE NO.	ACTIVITY SINCE LAST EDITION
CAB	Plain English for Airline/Passenger Contracts	37068	Title change for this edition -- Notice to Passengers of Conditions of Carriage.
FDIC	Disclosure of Information	37031	Final Rule -- 45 FR 50550, 7/30/80.
FERC	High-Cost Natural Gas Produced from Tight Formations	36879	The Commission issued its decision on 10/21/80, after rehearing the issue.
FHLBB	Regulations to Implement the Depository Institutions Deregulation and Monetary Control Act of 1980	36932	Parts of this entry have gone to final action for this issue of the Calendar. We list them below:
	-Consumer Lending Power (Formal Title: Investment in Consumer Loans, Commercial Paper, and Corporate Debt Securities)	"	Final Rule expected November 1980.
	-Consumer Safeguards on Mobile Home Lending (Formal Title: Mobile Home Loan Consumer Protection Provisions)	"	Final Rules -- 45 FR 46339, 7/10/80; 45 FR 50556, 7/30/80.
	-Credit Cards (Formal Title: Final Rules on Credit Cards, Travelers' Convenience Withdrawals, and Third-Party Payments)	"	Final Rule -- 45 FR 46338, 7/10/80.

APPENDIX II: STATUS OF REGULATIONS FROM MAY 1980 EDITION

AGENCY	TITLE OF REGULATION	FR 5/30/80 PAGE NO.	ACTIVITY SINCE LAST EDITION
FHLBB (cont)	-Federal Insurance Reserve (Formal Title: Reserve Requirements)	"	Final Rule -- 45 FR 50797, 7/31/80.
	-Federal Mutual Savings Banks' Leeway Authority (Formal Title: Amendments Relating to Federal Mutual Savings Banks)	"	Final Temporary Rule -- 45 FR 56031, 8/22/80.
	-FHL Bank Processing NOW Accounts (Formal Title: Collection, Processing and Settlement of Payment Instruments)	"	Final Rule -- 45 FR 64161, 9/29/80.
	-Investment in Service Corporations (Formal Title: Service Corporation Investment Authority)	"	Final Rule -- 45 FR 56029, 8/22/80.
	-Money Market Fund Investments (Formal Title: Mutual Fund Investment Counting Toward Liquidity)	"	Final Rule -- 45 FR 57113, 8/27/80.
	-Mutual Capital Certificates	"	Final Rule expected November 1980.
	-NOW Account Authority and Overdraft Authority for Federals on NOW Accounts (Formal Title: NOW Accounts)	"	Final Rule -- 45 FR 66781, 10/8/80.

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AGENCY	TITLE OF REGULATION	FR 5/30/80 PAGE NO.	ACTIVITY SINCE LAST EDITION
FHLBB (cont)	-Regulatory Simplification (Formal Title: Resolution Regarding Regulatory Simplification)	"	Resolution -- 45 FR 63135, 10/23/80.
	-Reserves Against S&L Deposits (Formal Title: Revisions to Net Worth Requirements)	"	Final Rule expected November 1980.
	-Residential Real Estate Authority (Formal Title: Revision of Real Estate Lending Practices)	"	Final Rule expected November/December 1980.
	-State Stock to Federal Charter (Formal Title: Conversion from State Stock to Federal Stock Charter)	"	Final Rule -- 45 FR 57114, 8/22/80
	-Trust Powers (Formal Title: Trust Powers Authorization)	"	Final Rule expected December 1980/January 1981.
ICC	Improvement of TOFC/COFC Regulations	37077	This proceeding is being held in abeyance pending development of railroad legislation in Congress. Section 34 of the Motor Carrier Act of 1980 has already enacted certain provisions of this proposal.
ICC	Intercompany Hauling	37078	Withdrawn because it was superseded by the Motor Carrier Act of 1980. See "Implementation of Intercompany Hauling Legislation," 45 FR 45526, 7/3/80.

APPENDIX II: STATUS OF REGULATIONS FROM MAY 1980 EDITION

AGENCY	TITLE OF REGULATION	FR 5/30/80 PAGE NO.	ACTIVITY SINCE LAST EDITION
ICC	No Suspend Zone--Motor Common Carriers of Property	37080	Comment period extended to July 1, 1980 (45 FR 39316) to give parties an opportunity to refocus their comments in light of the Motor Carrier Act of 1980. Comments are now under review. The Commission will decide whether to proceed with or withdraw this case after it reviews those comments.
PRC	Experimental Classification Rulemaking	37081	Title change for this edition -- Experimental Classification-- Rulemaking Docket No. RM80-2.
PRC	Postal Rate Commission MC79-3 (Red Tag)	37083	The Commission issued its opinion on 5/16/80. The Governors of the Postal Service accepted the Commission's Decision on 8/15/80.

APPENDIX II: STATUS OF REGULATIONS FROM MAY 1980 EDITION

AGENCY	TITLE OF REGULATION	FR 5/30/80 PAGE NO.	ACTIVITY SINCE LAST EDITION
SEC	Proposed Amendments to Annual Report Form; Integration of Securities Act Disclosure Systems	36933	This item encompasses numerous rules which are in different stages of development. One group of rules, involving the amendment of the annual report form to the SEC and the composition of the annual report to security holders has been adopted (45 FR 63630, 63660, 63682, 9/25/80). NPRMs for the second group, involving a comprehensive revision of the system for registration of securities and amendments to the quarterly report form, have been published (45 FR 63693, 63724, 9/25/80). See Calendar entry "Proposed Comprehensive Revision to System for Registration of Securities Offerings."
SEC	Revised Procedures for Processing Post-Effective Amendments Filed by Investment Companies	36935	Final Rule -- 45 FR 57702, 8/29/80.

APPENDIX III: PUBLICATION DATES FOR AGENCY SEMIANNUAL REGULATORY AGENDAS

This appendix lists publication dates for the semiannual regulatory agendas that agencies prepare in response to Executive Order 12044, Improving Government Regulations (3 CFR, 1978 Comp., p. 152 which was extended by E.O. 12221, 45 FR 44249, July 1, 1981). It provides the dates of each agency's last published semiannual agenda and the Federal Register citation to enable the public to gain quick access to the list of all significant regulations the agency is considering or reviewing. The appendix also lists the date the agency expects to publish its next agenda.

All executive agencies, and those independent agencies that voluntarily choose to, publish these agendas. The agendas describe, at a minimum, the regulations they are considering, the need for and the basis of the action the agency is taking, the status of the regulations previously listed on the agenda, and an agency contact. The semiannual agendas list all regulations the agencies consider to be "significant." The Calendar describes more fully only the most important of these significant regulations. The Regulatory Council and the Office of Management and Budget have jointly urged agencies to consider coordinating the publication dates of their semiannual agency agendas with the publication of the Calendar of Federal Regulations. Doing so will provide, twice a year, a comprehensive picture of the regulations that the agencies are developing. We welcome your comments on this idea.

Agency	Publication Date of Last Agenda	Federal Register Citation	Publication Date of Next Agenda
Executive Agencies			
Administrative Conference of the United States	Not applicable	--	--
Department of Agriculture	May 15, 1980	45 FR 32192	November 15, 1980
Department of Commerce	June 5, 1980	45 FR 37972	November 14, 1980
Department of Education	--	--	December 1, 1980
Department of Energy	November 3, 1980	45 FR 72886	Week of April 27, 1981
Department of Health and Human Services	June 13, 1980	45 FR 40356	December 16, 1980
Department of Housing and Urban Development	September 5, 1980	45 FR 59062	March 2, 1981
Department of Interior	July 31, 1980	45 FR 51102	January 30, 1981
Department of Justice:			
Bureau of Prisons	July 31, 1980	45 FR 50818	January 30, 1981
Civil Rights Division	October 8, 1980	45 FR 66813	January 30, 1981
Drug Enforcement Administration	August 7, 1980	45 FR 52397	January 30, 1981
Immigration and Naturalization Service	October 6, 1980	45 FR 66173	January 30, 1981
Land and Natural Resources Division	July 31, 1980	45 FR 50818	January 30, 1981
Office of Justice Assistance,			
Research and Statistics	August 1, 1980	45 FR 51506	January 30, 1981
Parole Commission	September 12, 1980	45 FR 60451	January 30, 1981
Department of Labor	June 3, 1980	45 FR 37648	November 1980
Department of Transportation	August 25, 1980	45 FR 56538	February 26, 1981
Department of the Treasury:			
Alcohol, Tobacco, and Firearms	August 1, 1980	45 FR 51500	February 2, 1981
Comptroller of the Currency	August 6, 1980	45 FR 52166	February 2, 1981
Customs	August 1, 1980	45 FR 51496	February 2, 1981
Environmental Protection Agency	June 30, 1980	45 FR 44106	December 20, 1980
Equal Employment Opportunity Commission	July 30, 1980	45 FR 51229	January 30, 1981
Federal Emergency Management Agency	--	--	Anticipated January 1981
General Services Administration	May 30, 1980	45 FR 36440	November 28, 1980
National Credit Union Administration	July 16, 1980	45 FR 47694	December 11, 1980
Small Business Administration	July 10, 1980	45 FR 46433	February 10, 1981
United States International Trade Commission	Not Applicable	--	--
Veterans Administration	June 18, 1980	45 FR 41169	December 18, 1980
Independent Regulatory Agencies			
Civil Aeronautics Board	June 6, 1980	45 FR 38073	November 28, 1980
Commodity Futures Trading Commission	June 25, 1980	45 FR 49589	April 10, 1981
Consumer Product Safety Commission	--	--	Currently Being Scheduled
Federal Communications Commission	May 6, 1980	45 FR 26723	October 1980
Federal Deposit Insurance Corporation	September 26, 1980	45 FR 63867	Anticipated March/April 1981
Federal Election Commission	Not Applicable	--	--
Federal Energy Regulatory Commission	Not Applicable	--	--
Federal Home Loan Bank Board	October 14, 1980	45 FR 67674	May 1981
Federal Maritime Commission	Not Applicable	--	--
Federal Mine Safety and Health Review Commission	Not Applicable	--	--
Federal Reserve System	August 4, 1980	45 FR 51581	February 1981
Federal Trade Commission	August 1, 1979	44 FR 45177	November 28, 1980
Interstate Commerce Commission	July 19, 1979	44 FR 42561	January 1981
National Labor Relations Board	Not Applicable	--	--
Nuclear Regulatory Commission	Not Applicable	--	--
Occupational Safety and Health Review Commission	Not Applicable	--	--
Postal Rate Commission	Not Applicable	--	--
Securities and Exchange Commission	July 3, 1980	45 FR 45554	December 1980

APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

This Appendix provides information about existing regulations the agencies are reviewing according to their internal review procedures or as part of the review requirements of Executive Order 12044, Improving Government Regulations. Many agencies periodically review their existing regulations to determine whether the regulations are still achieving their intended goals effectively.

In some cases, Calendar entries describe regulatory actions that the agencies initiated as a result of this review process. Because these regulations appear in the text, this Appendix does not list such actions.

The index is organized alphabetically by agency, by unit within the agency, and then by the title of the regulation. For guidance on how to get further information on these regulations, contact the "Information Contact" in Appendix I: "Public Participation in the Federal Regulatory Process."

AGENCY	TITLE OF REGULATION	CITATION	ESTIMATED DATES OF REVIEW	
			BEGIN	END
USDA-FmHA	Guaranteed Loan Programs - General	7 CFR 1980-A	7/81	12/81
USDA-FNS	Food Distribution Program	7 CFR Part 250	7/80	7/81
USDA-FS	Timber Management Planning	36 CFR 221.3	10/80	4/81
USDA-FSOS	Standards and Labeling of Meat and Poultry Products	9 CFR Parts 312, 316, 317, and 381	8/80	8/83
DOC-ITA	Anti-dumping Duties and Counter-vailing Duties	19 CFR Parts 353 and 355	Under Review	3/81

APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION	ESTIMATED DATES OF REVIEW	
			BEGIN	END
DOC-ITA	Export Administration Regulations	15 CFR Parts 368 and 370-399	Under Review	3/81
DOC-MARAD	Application for Subsidies and Other Direct Financial Aid; Charges for Processing Applications to Transfer Ownership or Vessels Built with Construction-Differential Subsidy	46 CFR Part 251	10/80	12/80
DOC-MARAD	Approval of Certain Vessel Transfers or Charters; Citizenship Declaration by Owners or Mortgagees; Uniform Bareboat Charter Agreements Fees and Processing Vessel Transfer Applications	46 CFR Part 221	Under Review	2/81
DOC-MARAD	Awards of Operating-Differential Subsidy Agreements and Payment of Subsidy	46 CFR Part 280	2/81	4/81
DOC-MARAD	Capital Construction Fund Program	46 CFR Part 390	Under Review	1/81
DOC-MARAD	Employment in the Foreign-to-Foreign Trade of Liquid and Dry Bulk Vessels Constructed with the Aid of Construction-Differential Subsidy	46 CFR Part 278	11/80	1/81
DOC-MARAD	Federal Income Tax Aspects of the Capital Construction Fund	46 CFR Part 391	Under Review	11/80
DOC-MARAD	Merchant Marine Training at U.S. Merchant Marine Academy and State Maritime Academies and Colleges	46 CFR Part 310	Under Review	11/81

APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION	ESTIMATED DATES OF REVIEW	
			BEGIN	END
DOC- MARAD	Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in Carrying Bulk Raw and Processed Agricultural Commodities from the United States to the Union of Soviet Socialist Republics	46 CFR Part 294	1/81	3/81
DOC- MARAD	Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in United States Foreign Commerce on the Great Lakes, Connecting Rivers, St. Lawrence River, Gulf of St. Lawrence	46 CFR Part 279	1/81	3/81
DOC- MARAD	Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in Worldwide Services	46 CFR Part 252	Under Review	11/81
DOC- MARAD	Participation by Vessels Built with Construction - Differential Subsidy in the Carriage of Oil from Alaska in the Domestic Trade	46 CFR Part 250	10/80	1/81
DOC- MARAD	Radar Observer Certificates, Ship's Safety, and Use of Radar	32A CFR Part 1867	Under Review	9/81
DOC- MARAD	Statistical Data Required for Use in Operating - Differential Subsidy Application Hearings	46 CFR Part 207	2/81	3/81
DOC- MARAD	Valuation of War Risk Hull Insurance	46 CFR Part 309	1/81	4/81

APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION	ESTIMATED DATES OF REVIEW	
			BEGIN	END
DOC- NOAA- NMFS	Fishery Conservation and Management: Guidelines for Development of Fishery Management Plans	50 CFR 602.2	Under Review	12/80
DOC- NOAA- NMFS	Processed Fishery Products, Processed Products Thereof, and Certain Other Processed Food Products: Inspection and Certification	50 CFR Part 260	1/81	4/81
DOC- NOAA- NMFS	Processed Fishery Products, Processed Products Thereof, and Certain Other Processed Food Products: U.S. Standards for Grades of Crustacean Shellfish Products	50 CFR Part 265	Under Review	12/80
DOC- NOAA- NMFS	Processed Fishery Products, Processed Products Thereof, and Certain Other Processed Food Products: U.S. Standards for Grades of Fish Steaks	50 CFR Part 262	6/81	9/81
DOC- NOAA- NMFS	Processed Fishery Products, Processed Products Thereof, and Certain Other Processed Food Products: U.S. Standards for Grades of Whole or Dressed Fish	50 CFR Part 261	6/81	9/81
DOC- NOAA- NMFS	Regulations Governing the Taking and Importing of Marine Mammals: Taking and Related Acts Incidental to Commercial Fishing Operations	50 CFR 216.24	6/81	9/81
DOC- NOAA- OC2M	Coastal Energy Impact Program Regulations	15 CFR Part 931	1/81	4/81

APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION	ESTIMATED DATES OF REVIEW	
			BEGIN	END
DOC- NOAA- OCZM	Coastal Zone Management Program, Development and Approval Provisions	15 CFR Part 923	1/81	4/81
	Public Telecommunications Facilities Program	15 CFR Part 2301	10/81	12/81
ED	For Department of Education's entries the citation in parentheses is the new citation that will be assigned to the regulation when it is transferred to Title 34 CFR.			
ED-OERI	Citizens Education for Cultural Understanding Program	45 CFR Part 146a (34 CFR Part 667)	10/80	12/80
ED-OERI	College Library Resources Program	45 CFR Part 131 (34 CFR Part 773)	10/80	12/80
ED-OERI	Educational Information Centers Program	45 CFR Part 137 (34 CFR Part 606)	10/80	12/80
ED-OERI	Grants for Training in Librarianship	45 CFR Part 132 (34 CFR Part 776)	10/80	12/80
ED-OERI	Grants to State Educational Agencies for Educational Improvement, Resources, and Support	45 CFR Part 134 (34 CFR Part 774)	10/80	12/80
ED-OERI	Library Research and Demonstration	45 CFR Part 133 (34 CFR Part 777)	10/80	12/80

APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION	ESTIMATED DATES OF REVIEW	
			BEGIN	END
ED-OERI	Library Services, Public Library Construction, and Interlibrary Cooperation	45 CFR Part 130 (34 CFR Part 770)	10/80	12/80
ED-OERI	Modern Foreign Language and Study Areas	45 CFR Part 146 (34 CFR Part 655)	10/80	12/80
ED-OERI	Strengthening Research Library Resources	45 CFR Part 136 (34 CFR Part 778)	10/80	12/80
ED-OERI	Support for Improvement of Post-secondary Education	45 CFR Part 1501 (34 CFR Part 730)	10/80	12/80
ED-OERI	Teacher Centers Program	45 CFR Part 197 (34 CFR Part 240)	10/80	12/80
ED-OERI	Teacher Corps	45 CFR Part 172 (34 CFR Part 793)	10/80	12/80
ED-OPE	Basic Educational Opportunity Grant Program	45 CFR Part 190 (34 CFR Part 690)	10/80	12/80
ED-OPE	College Work-Study and Job Location and Development Program	45 CFR Part 175 (34 CFR Part 675)	10/80	12/80
ED-OPE	Community Service and Continuing Education Programs	45 CFR Part 173 (34 CFR Part 610)	10/80	12/80
ED-OPE	Cooperative Education Programs	45 CFR Part 182 (34 CFR Part 631)	10/80	12/80
ED-OPE	Domestic Mining and Mineral and Mineral Fuel Conservation Fellowships	45 CFR Part 196 (34 CFR Part 650)	10/80	12/80

APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION	ESTIMATED DATES OF REVIEW	
			BEGIN	END
ED-OPE	Educational Opportunity Centers	45 CFR Part 154 (34 CFR Part 644)	10/80	12/80
ED-OPE	Financial Assistance for Construction, Reconstruction or Renovation of Higher Education Facilities	45 CFR Part 170 (34 CFR Part 617)	10/80	12/80
ED-OPE	General Provisions Relating to Student Assistance Programs	45 CFR Part 168 (34 CFR Part 668)	10/80	12/80
ED-OPE	Graduate and Professional Study Fellowships and Institutional Grants	45 CFR Part 179 (34 CFR Part 648)	10/80	12/80
ED-OPE	Guaranteed Student Loan Program	45 CFR Part 177 (34 CFR Part 682)	10/80	12/80
ED-OPE	Law School Clinical Experience Program	45 CFR Part 150 (34 CFR 639)	10/80	12/80
ED-OPE	National Direct Student Loan Program	45 CFR Part 174 (34 CFR Part 674)	10/80	12/80
ED-OPE	Public Service Education Program	45 CFR Part 194 (34 CFR Part 649)	10/80	12/80
ED-OPE	Special Services for Disadvantaged Students Program	45 CFR Part 157 (34 CFR Part 656)	10/80	12/80
ED-OPE	State Post-secondary Education Commissions Programs - Intrastate Planning	45 CFR Part 199a (34 CFR Part 605)	10/80	12/80
ED-OPE	State Student Incentive Grant Program	45 CFR Part 192 (34 CFR Part 692)	10/80	12/80

APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION	ESTIMATED DATES OF REVIEW	
			BEGIN	END
ED-OPE	Strengthening Developing Institution Program	45 CFR Part 169 (34 CFR Part 624)	10/80	12/80
ED-OPE	Student Consumer Information Services	45 CFR Part 178 (34 CFR Part 686)	10/80	12/80
ED-OPE	Supplemental Educational Opportunity Grant Program	45 CFR Part 176 (34 CFR Part 676)	10/80	12/80
ED-OPE	Talent Search Program	45 CFR Part 159 (34 CFR Part 643)	10/80	12/80
ED-OPE	Training for Higher Education Personnel	45 CFR Part 198 (34 CFR Part 642)	10/80	12/80
ED-OPE	Upward Bound Program	45 CFR Part 155 (34 CFR Part 645)	10/80	12/80
ED-OPE	Veterans' Cost-of-Instruction Payments to Institutions of Higher Education	45 CFR Part 189 (34 CFR Part 629)	10/80	12/80
DOE-ERA	Proposed Amendments to the Equal Application Rule	10 CFR 212.83(h)	6/80	11-2/80
HUD	Mobile Home Construction and Safety Standards	24 CFR Parts 282 and 283	12/80	7/81
DOI-BLM	Leasing of Minerals Other than Oil and Gas	43 CFR Part 3500	3/81	6/81
DOI-FWS	Endangered Species Convention	50 CFR Part 23	10/80	12/80
DOI-GS	Coal Mining Operating Regulations	30 CFR Part 211	5/80	1/81
DOI-NPS	Boating Regulations	36 CFR Part 3	10/80	10/81

APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION	ESTIMATED DATES OF REVIEW	
			BEGIN	END
DOJ-INS	Naturalization and Citizenship (Streamlining Naturalization Procedures to Decrease the Burden on Petitioners and their Families and in Derivative Citizenship Cases)	8 CFR Chapter 1	Upon Enactment of H.R. 7273	3 Months after Enactment
DOL-ESA	Black Lung Benefits: Requirements for Coal Mine Operators Insurance	20 CFR Part 726	Ongoing	--
DOL-ESA	Criteria for Determining Whether State Workers' Compensation Laws Provide Adequate Compensation for Pneumoconioses	20 CFR Part 722	Ongoing	--
DOL-ESA	Labor Standards for Federal Service Contracts	29 CFR Part 4	Ongoing	--
DOL-ESA	Labor Standards Provisions, Davis-Bacon and Related Acts	29 CFR Parts 1, 3 and 5	Ongoing	--
DOL-ESA	Office of Federal Contract Compliance Programs	41 CFR Parts 60-1, 60-2, 60-3, 60-4, 60-20, 60-30, 60-60, 60-250, 60-741	Ongoing	--
DOL-LMSA	Revision of Certain Annual Information Return/Reports	29 CFR Part 2520	Ongoing	--
DOL-MSHA	Civil Penalties	30 CFR Part 100	Ongoing	--
DOL-MSHA	Respirable Dust Standard for Surface Coal Mines	30 CFR Part 71	Ongoing	--
DOL-MSHA	Underground Coal Mine Safety Standards	30 CFR Part 75	Ongoing	--

APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION	ESTIMATED DATES OF REVIEW	
			BEGIN	END
DOL-OSHA	Fire Protection	29 CFR Part 1910 Subpart L	Ongoing	--
DOL-OSHA	MROCA	29 CFR 1910.94 (a)	Ongoing	--
DOL-OSHA	Nickel Standard	29 CFR 1910.94 (a)	Ongoing	--
DOL-OSHA	Safety and Health Regulation for Marine Terminal Facilities	29 CFR Parts 1918 Subparts M-S	Ongoing	--
DOL-OSHA	Shiprepairing, Shipbuilding, Shipbreaking	29 CFR Parts 1915, 1916, and 1917	Ongoing	--
DOL-OSHA	Tunnelling	29 CFR 1926	Ongoing	--
DOT-FRA	General Safety Inquiry	43 FR 19696	Ongoing	--
DOT-NHTSA	Exterior Protection	49 CFR 471.215 and 49 CFR Part 581	Ongoing	Fall 1980
DOT-NHTSA	Impact Protection for the Driver From Steering Control System and Steering Control Rearward Displacement	49 CFR 571.203 and 49 CFR 571.204	Ongoing	Fall 1980
DOT-NHTSA	Occupant Protection	49 CFR 571.208	Ongoing	Spring
DOT-RSPA	Master Meter and LPG Distribution Systems	49 CFR Part 192	Ongoing	12/80
				1981

APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION	ESTIMATED DATES OF REVIEW	
			BEGIN	END
DOT-RSPA	Petroleum Gas Systems	49 CFR Part 192	Ongoing	11/80
DOT-RSPA	Toxic Materials; Definitions, Criteria, and Proposed Regulations	49 CFR 173.326 and 173.343	Ongoing	9/81
DOT-USCG	Licensing of Merchant Seamen	46 CFR Part 10	Ongoing	3/81
DOT-USCG	Oil Transfer and Oil Pollution	33 CFR Parts 154, 155, and 156	Ongoing	3/81
DOT-USCG	Vessel Documentation	46 CFR Part 67	Ongoing	5/81
TREAS-ATF	Definition of "Engaged in the Business"	27 CFR Part 178	11/79	1/81
TREAS-ATF	Recodification of Explosives Regulations	27 CFR Part 181	1/80	12/80
TREAS-ATF	Recodification of Wine Regulations	27 CFR Parts 240, 231, and 170	5/79	7/81
TREAS-ATF	Sales of Firearms at Gun Shows	27 CFR Part 178	2/80	3/81
TREAS-OC	Assessment of Fees; National Banks; District of Columbia Banks	12 CFR Part 8	9/80	6/30/81
TREAS-OC	Securities Exchange Act Disclosure Rules	12 CFR Part 11	6/80	12/31/80
EEOC	Age Discrimination in Employment Act Interpretative Regulations	29 CFR Part 860 et seq.	7/1/79	Ongoing
EEOC	Equal Pay Act Interpretative Regulations	29 CFR Part 800 et seq.	7/1/79	Ongoing

APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION	ESTIMATED DATES OF REVIEW	
			BEGIN	END
EEOC	Recordkeeping Regulations	29 CFR Part 1602 et seq.	1/2/78	Ongoing
NCUA	Credit Union Service Centers; Purchase and Sale of Accounting Services; Joint Operations	12 CFR 701.26, 701.27-1, 701.28	10/80	11/30/80
NCUA	Incidental Powers of Federal Credit Unions	12 CFR Part 721	8/80	12/31/80
NCUA	Incorporation by Reference of the Accounting Manual for Federal Credit Unions	12 CFR 701.2	6/80	12/31/80
NCUA	Surety Bond and Insurance Coverage	12 CFR 701.20	10/80	12/31/80
SBA	Disaster Loans	13 CFR Part 123	6/1/80	12/30/80
CAB	The CAB's regulations scheduled for Agency review are listed in its semiannual agenda which was last published at 45 FR 38073 6/6/80	45 FR 38073 6/6/80	--	--
CFTC	Amendments to Minimum Financial and Related Reporting Requirements for Futures Commission Merchants	17 CFR 1.17	Ongoing	12/80
CFTC	Dealer Options	17 CFR Part 32	Ongoing	--
CFTC	Reform of Reparations System	17 CFR Part 12	Ongoing	12/80
CFTC	Regulation of Gold and Silver Leverage Transactions	17 CFR Part 31	Ongoing	--

APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION	ESTIMATED DATES OF REVIEW	
			BEGIN	END
FCC	The FCC's regulations scheduled for Agency review are listed in its semiannual agenda which was last published at 45 FR 26723 5/6/80	45 FR 26723 5/6/80	--	--
FHLBB	Forward Commitments	12 CFR 563.17-3	Ongoing	--
FHLBB	Futures Transactions	12 CFR 545.29	Ongoing	--
FHLBB	Rule of Credit Practices to Parallel Federal Trade Commission Trade Regulation Rule	--	Ongoing	--
FHLBB	Rule on Holder-in-Due-Course to Parallel Federal Trade Commission Trade Regulation Rule	--	Ongoing	--
FMC	Temporary Tariff Filings	46 CFR Part 536	Ongoing	12/80
FRS	Home Mortgage Disclosure -- Regulation C	12 CFR Part 203	12/80	3/81
FTC	Cooling Off Period for Door to Door Sales	16 CFR Part 429	11/79	1/81
FTC	Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures	16 CFR Part 436	11/79	6/81
FTC	Retail Food Store Advertising and Marketing Practices	16 CFR Part 424	1/77	3/81

APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION	ESTIMATED DATES OF REVIEW	
			BEGIN	END
ICC	Abandonment of Railroad Lines and Discontinuance of Service	40 CFR Part 1121	11/80	6/81
ICC	Classification of Brokers and Motor Carriers	40 CFR Part 1040	Ongoing	1/81
ICC	Construction, Extension, Acquisition, or Operation of Railroad Lines	49 CFR Part 1120	10/80	2/81
ICC	Control or Consolidation of Motor Carriers on their Property	49 CFR Part 1134	11/80	6/81
ICC	Detention of Motor Vehicles--Nationwide	49 CFR 1310.15	Ongoing	3/81
ICC	Gateways and Tacking--Irregular Route Motor Common Carriers of Property	49 CFR Part 1065	Ongoing	6/81
ICC	General Rules of Practice	49 CFR Part 1100	Ongoing	5/81
ICC	Market Dominance Rules	49 CFR 1109.1	Ongoing	12/80
ICC	Payment of Rates and Charges of Motor Carriers	49 CFR Part 1320	Ongoing	1/81
ICC	Procedures to be Followed in Motor Carrier Revenue Proceedings	49 CFR Part 1104	11/80	7/81
ICC	Railroad Acquisition Control, Merger, Consolidation Project, Trackage Rights, and Lease Procedures	49 CFR Part 1111	12/79	1/81

APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION	ESTIMATED DATES OF REVIEW	
			BEGIN	END
ICC	Railroad Cost Recovery Procedures	49 CFR Part 1102	Ongoing	12/80
ICC	Regulations for Payment of Rates and Charges	49 CFR 1320.1	Ongoing	1/81
ICC	Temporary Operating Authorities and Approvals	49 CFR Part 1101	Ongoing	5/81
NRC	In the Three Mile Island action plan (new NUREG 0660), the Commission directed the NRC staff to review each NRC regulation within 5 years. The scope of this task is to review the regulations for content, quality, clarity and structure beginning with those rules broadly affected by Three Mile Island. This review of the regulations is to be carried out in accordance with the criteria set forth in E.O. 12044.			
SEC	Disclosure Study -- Review of Disclosure Requirements Under the Securities Act of 1933 and Investment Company Act of 1940	17 CFR 270 et seq.	8/79	Unknown
SEC	Financial Responsibility Rules for Broker-Dealers	17 CFR 240.15c3-1 and 240.15c3-3	9/80	Unknown
SEC	Investment Advisers Act Study	17 CFR 275 et seq.	12/78	Unknown

Code of Federal Regulations

Revised as of July 1, 1980

Quantity	Volume	Price	Amount
_____	Title 41—Public Contracts and Property Management (Chapters 10 to 17)	\$7.50	\$ _____
_____	Title 41—Public Contracts and Property Management (Chapters 19 to 100)	7.50	_____
		Total Order	\$ _____

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